

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN § 3:21-CV-00259-DCG-JES-JVB  
AMERICAN CITIZENS, ET AL §  
§  
V. § 2:01 P.M. TO 5:43 P.M.  
§  
GREG ABBOTT, IN HIS §  
OFFICIAL CAPACITY AS §  
GOVERNOR OF THE STATE OF §  
TEXAS, ET AL § JANUARY 26, 2022

HEARING ON MOTION FOR PRELIMINARY INJUNCTION  
AS TO SENATE DISTRICT 10  
BEFORE THE HONORABLE DAVID C. GUADERRAMA,  
HONORABLE JERRY E. SMITH  
AND HONORABLE JEFFREY V. BROWN  
VOLUME 5 (PM SESSION) OF 9 VOLUMES

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**VOLUME 5**  
**(HEARING ON MOTION FOR PRELIMINARY INJUNCTION**  
**AS TO SENATE DISTRICT 10)**

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**PROCEEDINGS**

JUDGE GUADERRAMA: Good afternoon, everyone.

Please be seated.

Mr. Sweeten, you were about to lead us into a different area, right?

MR. SWEETEN: Yes, sir.

JUDGE GUADERRAMA: Senator Powell is still on the witness stand.

**SENATOR BEVERLY POWELL,**

having been previously duly sworn, testified as follows:

**CROSS-EXAMINATION**

BY MR. SWEETEN:

**Q.** Welcome back from the break, Senator Powell.

**A.** Thank you, Mr. Sweeten.

**Q.** So I want to continue our discussion; and one of the things I want to talk about is the October 4th, 2021, hearing in the Senate when Senator Huffman first laid out Senate Bill 4 to the Senate floor. Okay?

**A.** Okay.

**Q.** All right. So in laying out the bill, she first offered up opening remarks, right?

**A.** That's right.

**Q.** Okay. Those remarks explained the bill?

**A.** Yes.

**Q.** Okay. She took questions from other senators about

1 SB-4, right?

2 **A.** Yes.

3 **Q.** And you had the opportunity to have a colloquy with  
4 her and ask her lots of questions that day, didn't you?

02:02:07

5 **A.** Yes, sir.

6 **Q.** And you were, in fact, the first senator to ask her  
7 questions, to engage her in questions, correct?

8 **A.** I think that's correct, yes, sir.

02:02:18

9 **Q.** Now, I want us to take a look at some of those  
10 exchanges, Senator.

11 **A.** Okay.

12 **Q.** If we could play video clip -- so this is -- the hard  
13 copy is Exhibit 64. The video is Exhibit 65. These are  
14 both defendants' exhibits. What I plan to play is video  
15 clip 15:13 to 16:4.

02:02:33

16 Mr. Christopher.

17 (Defendants' Exhibit Number 64 played, as follows:)

18 "SENATOR HUFFMAN: I consulted with my legal  
19 counsel.

02:02:45

20 "SENATOR POWELL: Okay. Then I will ask you one  
21 more time."

22 (Defendants' Exhibit Number 64 interrupted.)

23 MR. SWEETEN: We're having technical difficulty.  
24 We'll get back to it.

02:03:03

25 (Defendants' Exhibit Number 64 played, as follows:)

1 "SENATOR POWELL: In terms of data that you  
2 consulted, RedAppl has a statistics tab that allows the  
3 user to choose which electoral and demographic data to  
4 display on the screen while the map is being drawn; is  
5 that correct?

02:03:28

6 "SENATOR HUFFMAN: Correct, yes.

7 "SENATOR POWELL: Which fields were displayed  
8 while the Senate plan was being drawn?

9 "SENATOR HUFFMAN: It changed. Sometimes we  
10 looked at county lines, sometimes precincts, the actual  
11 precincts highlighted. Sometimes we had it shaded for  
12 cities, and sometimes we had it shaded for partisan  
13 numbers. Sometimes they were Trump numbers. Sometimes we  
14 had several political elections up from different years  
15 that we looked at. But population numbers were almost  
16 always there. One thing we never had was racial shading."

02:03:58

17 (Defendants' Exhibit Number 64 concluded.)

18 BY MR. SWEETEN:

19 **Q.** Is that accurate? You recall that discussion you had  
20 with Senator Huffman?

02:04:11

21 **A.** Yes. That's what happened.

22 **Q.** Okay. Let's play another clip, if we could. By the  
23 way, just so we're clear, that happened during the  
24 October 4, 2021, session --

02:04:22

25 **A.** I think that's correct.

1 Q. -- on the Senate floor when she was laying out the  
2 bill.

3 Let's play another clip, if we could, which is again  
4 Exhibit 64, is the hard copy. Exhibit 65 is the video.  
02:04:35 5 If we could go to 16:5 to 16:20.

6 (Defendants' Exhibit Number 65 played, as follows:)

7 "SENATOR HUFFMAN: One thing we never had was  
8 racial shading.

9 "SENATOR POWELL: So did you have anything about  
02:04:43 10 total population on the screen?

11 "SENATOR HUFFMAN: Yes.

12 "SENATOR POWELL: And any deviation percentages?

13 "SENATOR HUFFMAN: Yes. There is a -- kind of a  
14 column in the left-hand side that as you proceeded you  
02:04:58 15 could see what it did to the statewide deviation. I think  
16 they may have had to click on another button to see it,  
17 but it was there on the left-hand column.

18 "SENATOR POWELL: And how about demographic data?

19 "SENATOR HUFFMAN: There was no demographic data  
02:05:10 20 provided just, as I said, sometimes partisan numbers,  
21 total population, city shading, things like that.

22 (Defendants' Exhibit Number 65 concluded.)

23 BY MR. SWEETEN:

24 Q. That was a correct and accurate depiction of your  
02:05:26 25 discussion with her about the issue of demographic data,

1 correct?

2 **A.** I think it is, yes.

3 **Q.** I think you have said this; but you obviously weren't  
4 in the room and had no -- you can't dispute that, correct?

02:05:35 5 **A.** I can't dispute it.

6 **Q.** All right. Now, let's go to another. If we could  
7 play the video clip of the Senate debate. This, again, is  
8 Exhibit 65, if we could go to 42:11 to 42:15. It's a  
9 short clip.

02:05:49 10 (Defendants' Exhibit Number 65 played, as follows:)

11 "SENATOR POWELL: -- partisan considerations  
12 after you heard the public testimony?

13 "SENATOR HUFFMAN: No.

14 "SENATOR POWELL: All right, then. You claim  
02:05:57 15 that this map was drawn blind to race; is that correct?

16 "SENATOR HUFFMAN: That is the -- the absolute  
17 truth as God is my witness."

18 (Defendants' Exhibit Number 65 concluded.)

19 BY MR. SWEETEN:

02:06:06 20 **Q.** End there. That is a correct -- that happened?

21 **A.** That's how she answered the question.

22 **Q.** And that's how you asked it?

23 **A.** That's how I asked it.

24 **Q.** Okay. Very good. All right. If we could look at  
02:06:16 25 another clip, 51:12 to 52:9, where you continue the

1 discussion.

2 (Defendants' Exhibit Number 65 played, as follows:)

3 "SENATOR HUFFMAN: I don't know that the courts  
4 have said that.

02:06:25

5 "SENATOR POWELL: Okay. So I -- I hear you say  
6 that you didn't look at racial data, but you would agree  
7 that urban areas in Fort Worth and Dallas have large  
8 concentrations of minority voters, wouldn't you?

02:06:38

9 "SENATOR HUFFMAN: I am not going to make  
10 assumptions based on race, period. All right. I have  
11 followed the law, and I am not going to get into that -- a  
12 racial discussion with you.

02:06:54

13 "I've followed the law. I have done what it has  
14 required me to do, what I wanted to do, and I'm going to  
15 leave it at that.

02:07:10

16 "SENATOR POWELL: So you are basically saying  
17 that despite serving on the redistricting committee for  
18 the past two cycles and chairing the committee this cycle  
19 and listening to witnesses who have testified from both  
20 redistricting cycles, that you came to the process  
21 completely unaware that minority voters are concentrated  
22 in urban areas of Dallas and Fort Worth?

02:07:28

23 "SENATOR HUFFMAN: Senator Powell, of course I  
24 have an awareness that there are minorities that live all  
25 over this state. All right. But I blinded myself to that

1 as I drew these maps and did not make map decisions based  
2 on racial determinations, period. Right."

3 (Defendants' Exhibit Number 65 concluded.)

4 BY MR. SWEETEN:

02:07:44

5 **Q.** Okay. And that clip was what you and Senator Huffman  
6 talked about, correct?

7 **A.** Yes.

8 **Q.** That accurately depicted it?

9 **A.** It accurately depicts the exchange.

02:07:55

10 **Q.** And, in short, she told you on the Senate floor she  
11 didn't make decisions based on race while drawing the  
12 lines of the Senate district? That's what she said,  
13 right?

14 **A.** She did.

02:08:04

15 **Q.** Okay. You have no personal knowledge that she  
16 utilized any sort of racial information when drawing  
17 SD-10, correct?

18 THE REPORTER: Excuse me. Could you start over,  
19 please.

02:08:13

20 MR. SWEETEN: Yes, ma'am.

21 BY MR. SWEETEN:

22 **Q.** You have no personal knowledge that she utilized any  
23 sort of racial information when drawing SD-10, correct?

24 **A.** I have no first-hand knowledge.

02:08:17

25 **Q.** Now, while you were -- while the debate was ongoing,

1 you had a discussion with Senator Royce West on the floor;  
2 is that correct?

3 **A.** That's correct.

02:08:32

4 **Q.** All right. And if we could play that part of the  
5 debate which starts at 123:9 to 124:1, please.

6 (Defendants' Exhibit Number 65 played, as follows:)

7 "SENATOR WEST: -- for elimination?

8 "SENATOR POWELL: Well, one would suspect that.

02:08:50

9 "SENATOR WEST: No. No. No. Wait. Hold on one  
10 second. This is going to be a part of the record. We  
11 know we are going to lose this particular vote. It's been  
12 said that Senate District 10 was going to flip. Okay.

13 "SENATOR POWELL: That's exactly right.

02:09:03

14 "SENATOR WEST: So let's get it on the record.  
15 Do you believe that your district is being intentionally  
16 targeted for elimination as being a Democratic-trending  
17 district?

02:09:20

18 "SENATOR POWELL: Absolutely. Absolutely,  
19 Senator West. And it goes back to the question that  
20 Chairman Huffman asked me the day that we had our meeting.

21 "When I sat down and she put the proposed map up onto  
22 the screen, she said, 'Do you have any questions for me?'

02:09:38

23 "And I answered to her, 'No. I have no questions  
24 because I can clearly see by this map what you are  
25 attempting to do.'"

1 (Defendants' Exhibit Number 65 concluded.)

2 BY MR. SWEETEN:

3 Q. Senator Powell, that's what you said in response to  
4 Senator West's questions of you, correct?

02:09:46 5 A. That is correct.

6 Q. All right. Now, we talked about this in your depo  
7 last week.

8 A. Yes.

9 Q. But let me just -- you try to tell the truth when you  
02:09:54 10 are on the Senate floor, correct?

11 A. Of course I do.

12 Q. And your answer to Senator West, that was a true  
13 statement, wasn't it?

14 A. Yes. It was a true statement.

02:10:01 15 Q. Okay. Now, Senator, I'm going to also bring up an  
16 exhibit that I think Mr. Dunn used with you, which is  
17 Defendants' Exhibit Number 27; and this is a copy of the  
18 *Senate Journal*, correct?

19 A. Yes, sir.

02:10:18 20 Q. Okay.

21 A. Can you tell me where that is in the exhibits?

22 Q. Yes. That should be Defendants' Exhibit Number 27.  
23 It should be a tab that says 27.

24 A. I'm sorry. I'm having a hard time reading what is on  
02:10:45 25 the screen.

1 Q. Okay. Yeah. No problem. We can do it with the  
2 exhibits. That's what they are there for.

3 A. Thank you.

02:10:58

4 JUDGE SMITH: Feel free to ask for clearer  
5 versions at any time.

6 THE WITNESS: Okay. Thank you.

7 A. Now, would you ask me the question again, Mr. Sweeten.  
8 BY MR. SWEETEN:

02:11:10

9 Q. Sure. Yes. Let me get my copy, too. We'll both be  
10 on hard copies. Okay. So you can see at the top of  
11 Defendants' Exhibit Number 27 we -- let's see. Let's go  
12 to the second page. It says "State PI-00283" on the  
13 bottom right?

14 A. Yes.

02:11:31

15 Q. Okay. You see those Bates numbers. Okay.

16 A. 223?

17 Q. Yeah. 283. 283.

18 A. Oh, I'm sorry. All right. I have that page before  
19 me.

02:11:58

20 Q. Okay. So if you look at the very bottom of that  
21 Page 283 -- and by the way, just to orient us all, this is  
22 the fourth day, Monday, October 4th, 2021, is the report  
23 from the *Senate Journal*.

24 Do you see that at the top?

02:12:11

25 A. I do see that.

1 Q. All right. If you go to the very bottom line on that  
2 page, it says, "CSSB relating to the composition of  
3 districts for the election of members of the Texas  
4 Senate."

02:12:22

5 Do you see that?

6 A. Yes, sir.

7 Q. If we go to the next page, it says, "The bill was read  
8 third time, was finally passed by the following votes.  
9 Yeas, 20. Nays, 11."

02:12:32

10 Did I read that right?

11 A. Yes, you did.

12 Q. Okay. Now, you talked a little bit about reasons for  
13 vote; and I want you to look down, if you would, now to  
14 Page 286.

02:12:51

15 A. All right. I see that.

16 Q. And you can see on the very bottom under Senator  
17 Eckhardt's reason for vote we see that it says, "Senator  
18 Johnson submitted the following reason for vote on  
19 CSSB-4."

02:13:03

20 Do you see that?

21 A. I do see it.

22 Q. All right. Let's read that. Let's read that first  
23 sentence on 287.

24 And by the way, actually, before we do that, Senator

02:13:13

25 Johnson is Senator Nathan Johnson; is that correct?

1   **A.**   That's correct.

2   **Q.**   Senator Nathan Johnson is a Democrat from the Dallas  
3   area, right?

4   **A.**   He is.

02:13:22

5   **Q.**   Senator Nathan Johnson says, "The proposed maps under  
6   CSSB do exactly what they were expected to do: They make  
7   districts more partisan and, if not invalidated by a court  
8   challenge, they effectively eliminate a Democratic seat."

9       Did I read that first line correctly?

02:13:41

10   **A.**   Yes, you did.

11   **Q.**   Okay. You can put that away.

12   **A.**   All right. Am I through with this book?

13   **Q.**   You can put that big book away, yes, ma'am.

14       Now, there are a few follow-up questions I want to  
15   have with you about the September 4th meeting you had in  
16   Senator Huffman's office. Do you remember that meeting?

02:14:12

17   **A.**   Okay.

18   **Q.**   That is the meeting where you went in and the map was  
19   on the wall.

02:14:22

20   **A.**   Okay.

21   **Q.**   Okay. Now, you brought the maps, you've already said,  
22   and Senator Huffman showed you what the possible draw  
23   looked like. At that time you handed her those racial  
24   shading maps; is that right?

02:14:36

25   **A.**   That's correct.

1 Q. Now, I want to be clear. You were not asked for those  
2 maps, correct?

3 A. That's correct.

4 Q. All right. And it's the case that you -- you are not  
5 testifying that you provided those maps prior to the  
6 September 4th meeting, correct?

7 A. I am not testifying that I --

8 Q. Okay.

9 A. -- provided them prior to that meeting.

10 Q. All right. Now, you also -- oh, at the meeting you  
11 expressed to Senator Huffman you were not happy with the  
12 way Senate District 10 was drawn, correct?

13 A. That's correct.

14 Q. And neither Senator Huffman, Ms. Mackin or Opperman,  
15 none of them said anything in that conversation that bears  
16 on the question of intentional discrimination. That's  
17 what you've said, correct?

18 A. I think that's correct.

19 Q. Okay. Now, you also told Mr. Dunn in his questioning  
20 that you provided copies of those maps to all of the House  
21 members, correct?

22 A. That's correct.

23 Q. All 150?

24 A. Yes, sir.

25 Q. And those were not asked for? You sent them on your

1 own volition, correct?

2 **A.** Yes, sir. That's correct.

3 **Q.** The same with the Senate? You sent it to all the  
4 senators, correct?

02:15:46 5 **A.** That's correct.

6 **Q.** Now, we talked a little bit about you had -- your  
7 counsel had put up an exhibit, and let's go ahead and do  
8 that so you can see it again. This one is Plaintiffs'  
9 Exhibit Number 4.

02:16:07 10 MR. SWEETEN: If you'll put that up, please.

11 BY MR. SWEETEN:

12 **Q.** Do you remember talking about this earlier?

13 **A.** Yes.

14 **Q.** Okay. So let's look at it. This is a letter that you  
02:16:32 15 wrote dated February 18th, 2020 --

16 **A.** Yes.

17 **Q.** -- to Senator Huffman, and this is where you invited  
18 her to -- you said, "Thank you for your invitation to  
19 participate in the planning process of the upcoming

02:16:49 20 hearing for Senate Select Committee on Redistricting on  
21 September 17th, 2020, in Denton/Tarrant Counties," right?

22 **A.** That's correct.

23 **Q.** So she had invited you, and you are thanking her for  
24 inviting you to that committee, correct?

02:17:02 25 **A.** I think she -- I think everyone in the Senate was

1 invited to participate in the hearings.

2 **Q.** Including you?

3 **A.** Yes, including me.

02:17:12

4 **Q.** And you wrote her on this date, February 18th, and you  
5 asked her to consider choosing Tarrant County to host the  
6 hearing, right?

7 **A.** Yes, I did.

02:17:30

8 **Q.** And you offered her a place and you said that it fit  
9 all the criteria and the venue would be free of charge?

10 Those are the things you told her, among others, right?

11 **A.** That's correct.

02:17:42

12 **Q.** All right. Now, it's the case, isn't it, if you look  
13 at the date on this, we know that three weeks later we  
14 were starting to see shutdowns in the U.S. based on COVID,  
15 correct?

16 **A.** Yes. That is correct.

02:17:55

17 **Q.** Okay. And you would agree with me it's a true  
18 statement, isn't it, that, in fact, that canceled an awful  
19 lot of interim hearings, the fact that COVID had come to  
20 the U.S. and, in particular, Texas, right?

21 **A.** I think the hearings went to Zoom, didn't they?

22 **Q.** I think they did.

23 **A.** I don't think they canceled them totally. It did  
24 change things.

02:18:07

25 **Q.** It changed things that there had originally been a

1 plan for the Senate -- as your letter references, there  
2 had been a plan for the Senate to travel to different  
3 regional places in the state and take testimony and listen  
4 to folks in those different regional areas, right?

02:18:25 5 **A.** I'm not specifically aware of the plan because I  
6 wasn't on redistricting.

7 **Q.** Okay.

8 **A.** I assume there was a plan for that.

9 **Q.** Right.

02:18:32 10 **A.** Yes.

11 **Q.** But, I mean, that's in line with what you are  
12 saying --

13 **A.** Yeah. I don't disagree.

14 **Q.** -- "Why don't you come to Tarrant County"?

02:18:38 15 **A.** I don't disagree.

16 **Q.** You don't disagree? That's logical, right?

17 **A.** Uh-huh.

18 **Q.** Okay. So, now, you wouldn't disagree that those  
19 regional hearings were not held, right?

02:18:46 20 **A.** They were not. That's correct.

21 **Q.** They were held instead by Zoom, an alternative  
22 platform, correct?

23 **A.** That's correct.

02:18:57 24 **Q.** The Senate committee couldn't go all over the state  
25 and talk to folks in, you know, the various corners and

1 regions of the state, could they?

2 **A.** They couldn't.

3 **Q.** Are you aware that there were actually 12 virtual  
4 hearings held for the 87th Regular Session?

02:19:10 5 **A.** I am aware there were hearings. I wasn't aware of the  
6 number.

7 **Q.** Okay.

8 **A.** But, yes, I am aware.

9 **Q.** Are you aware that there were five, let's see, after  
02:19:22 10 the regular session but before the third special session?

11 **A.** I am aware that there were, just not the specific  
12 number.

13 **Q.** Okay. And then during the 87th Third Session, are you  
14 aware that there were additional public input portals that  
02:19:39 15 were set up?

16 **A.** Yes.

17 **Q.** Okay. Now, something else happened in 2021, correct?  
18 And that is that the House broke quorum, right?

19 **A.** That's correct.

02:20:03 20 **Q.** And the House broke quorum, and many of the members  
21 went to Washington, D.C., correct?

22 **A.** That's correct.

23 **Q.** And you wouldn't disagree that that basically shut  
24 down the House Committee's ability to hold hearings during  
02:20:18 25 the time that they were in D.C., right? Or do you know?

1 **A.** I believe that it did.

2 **Q.** Okay. And so -- and the purpose of going to  
3 Washington, D.C., for these Democratic House members was  
4 literally to stop the legislative process from moving  
5 forward, correct?

02:20:33

6 **A.** I couldn't speak to their discussions about that. I'm  
7 sorry.

8 **Q.** Okay. Do you have -- I mean, is there any other  
9 reason that you think that they left for four weeks?

02:20:45

10 **A.** No. No.

11 **Q.** Okay. Now, one thing about the map configuration,  
12 that you would agree, that there were Anglos that were  
13 taken out of the configuration of SD-10, correct?

14 **A.** There were some.

02:21:11

15 **Q.** Yeah. And Anglos were -- and you would also agree  
16 that taking out 50 percent plus Anglo VTDs that vote  
17 Democratic is not evidence of intentional discrimination,  
18 correct? You have said that?

19 **A.** Please say that again.

02:21:25

20 **Q.** Taking out 50 percent or higher VTDs is not evidence  
21 of intentional discrimination, in your view, correct?  
22 That's what you have said?

23 **A.** I would agree with that.

24 **Q.** Okay. Very good. Now, I had talked to you earlier  
25 about a clip about counsel, and we were -- specifically,

02:21:39

02:21:59

1 we were talking about the Senate Redistricting Committee  
2 when the bills were laid out, and I had asked you if you  
3 recall was counsel named in that meeting. And I think you  
4 said you didn't recall that one way or the other; is that  
5 right?

6 **A.** That's right.

7 **Q.** Okay. I'm going to go to that clip and just show you  
8 a short clip.

9 (Video played, as follows:)

02:22:07

10 "SENATOR HUFFMAN: I consulted with my legal  
11 counsel.

12 "SENATOR POWELL: Okay. Then I will ask you one  
13 more time, 'Who is legal counsel?'

02:22:16

14 "SENATOR HUFFMAN: It's the Attorney General's  
15 office. My point of contact was Chris Hilton. Who else  
16 he talked to, I can't tell you.

17 "SENATOR POWELL: Okay. Thank you."

18 (Video concluded.)

19 BY MR. SWEETEN:

02:22:26

20 **Q.** Okay. So you were at the September 24th hearing in  
21 the Senate Redistricting Committee when you were told who  
22 had provided Senator Huffman with legal advice, correct?

23 **A.** She answered the question in the way that we have seen  
24 on the screen, yes, correct.

02:22:43

25 **Q.** Okay. And the way that we have seen on the screen is

1 that she said that, yes, she gave the name of the  
2 individual that was --

3 **A.** She gave the name of one individual.

4 **Q.** Okay. Very good. Thank you.

02:22:52 5 MR. SWEETEN: I have no further questions at this  
6 time, Senator Powell.

7 THE WITNESS: Thank you, Mr. Sweeten.

8 MR. SWEETEN: Thank you.

9 JUDGE GUADERRAMA: All right, Mr. Sweeten.

02:23:00 10 Mr. Dunn.

11 **REDIRECT EXAMINATION**

12 BY MR. DUNN:

13 **Q.** Picking up where we left off, Senator Powell, on the  
14 question of who was advising Senator Huffman from the  
02:23:20 15 Attorney General's office, the clip that you just saw, she  
16 advised that she was being advised by Mr. Hilton at the  
17 Attorney General's office. Are we on the same page now?

18 **A.** Yes.

19 **Q.** Okay. Do you recall earlier where we showed you the  
02:23:33 20 video clip of you asking Senator Huffman for the lawyers  
21 in the Attorney General's office that were available on  
22 redistricting?

23 **A.** Yes, I do.

24 **Q.** And do you recall asking the resource witness, the  
02:23:46 25 lawyer for the Attorney General's office, for a list?

1 **A.** Yes.

2 **Q.** And you were promised that?

3 **A.** I was promised that.

4 **Q.** Did you -- have you ever been given any name at all?

02:23:55

5 **A.** No, sir.

6 **Q.** Other than the lawyer that was advising Senator

7 Huffman?

8 **A.** Other than the one that -- no. No, sir.

9 **Q.** So as we sit here in this United States District

02:24:04

10 Court, you have disclosed to the State who your lawyers  
11 have been from start to finish; is that right?

12 **A.** Yes, sir.

13 **Q.** But you can't get the same information in return?

14 **A.** That's correct.

02:24:11

15 **Q.** You were also shown a video of a short exchange with  
16 Senator West -- do you recall that -- moments ago?

17 **A.** I do.

18 **Q.** That wasn't the whole exchange, was it?

19 **A.** No, it was not.

02:24:22

20 **Q.** I'm going to call the Courts' attention to Defendants'  
21 Exhibit Number 65, 2:10:02 to 2:13:00.

22 (Defendants' Exhibit Number 65 played, as follows:)

23 "SENATOR WEST: Senate District 10 is an  
24 urban/suburban district, correct?

02:24:57

25 "SENATOR POWELL: That's correct.

1 "SENATOR WEST: A crossover district?

2 "SENATOR POWELL: That's right.

3 "SENATOR WEST: We have seen a trend in your  
4 district of the persons there voting Democratic, correct?

02:25:09

5 "SENATOR POWELL: That's correct. We have.

6 "SENATOR WEST: And that's been over the last how  
7 many elections? Is it 2016, somewhere in there?

8 "SENATOR POWELL: I think that's true, since  
9 2016.

02:25:20

10 "SENATOR WEST: We have been seeing more  
11 African-Americans elected in your district; is that  
12 correct?

13 "SENATOR POWELL: We absolutely have.

14 "SENATOR WEST: And Latinos, correct?

02:25:27

15 "SENATOR POWELL: Yes, we have.

16 "SENATOR WEST: Devan Allen is now a county  
17 commissioner.

18 "SENATOR POWELL: County commissioner.

19 "SENATOR WEST: And she was elected by that  
02:25:32 20 coalition of Blacks, Whites, Hispanics and Asians; is that  
21 correct?

22 "SENATOR POWELL: That is correct.

23 "SENATOR WEST: We have also seen an increase in  
24 ethnic minorities in your district, correct?

02:25:46

25 "SENATOR POWELL: That is correct.

1 "SENATOR WEST: Okay. We've seen a decrease in  
2 Anglos in your district; is that correct?

3 "SENATOR POWELL: Yes, sir. That's correct.

02:25:58

4 "SENATOR WEST: Okay. We have seen an increase  
5 in the number of minorities that's being elected. We have  
6 seen an increase in the number -- an increase in the  
7 minority population in your district, a reduction in the  
8 Anglo population.

02:26:17

9 "Do you think the district is being targeted for  
10 elimination?

11 "SENATOR POWELL: Well, one would suspect that.

02:26:29

12 "SENATOR WEST: No. No. No. Wait. Hold on one  
13 second. This is going to be a part of the record. We  
14 know we're going to lose this particular vote. It's been  
15 said that Senate District 10 was going to flip. Okay.

16 "SENATOR POWELL: That's exactly right.

02:26:50

17 "SENATOR WEST: So let's get it on the record.  
18 Do you believe that your district is being intentionally  
19 targeted for elimination as being a Democratic-trending  
20 district?

21 "SENATOR POWELL: Absolutely. Absolutely,  
22 Senator West. And it goes back to the question that  
23 Chairman Huffman asked me the day that we had our meeting.

02:27:04

24 "When I sat down and she put the proposed map up onto  
25 the screen, she said, 'Do you have any questions for me?'

1 "And I answered to her, 'No. I have no questions  
2 because I can clearly see by this map what you are  
3 attempting to do.'

02:27:20

4 "SENATOR WEST: Do you know of any other  
5 urban/suburban-trending districts in the state of Texas  
6 that have been, frankly, gerrymandered like yours has,  
7 ma'am?

02:27:35

8 "SENATOR POWELL: I know of no other district  
9 that has been gerrymandered in this fashion where we have  
10 cracked apart the minority voters in a district and  
11 submerged them into a highly Anglo rural population.

12 "SENATOR WEST: Now -- and let me say this --"

13 (Defendants' Exhibit Number 65 concluded.)

14 BY MR. DUNN:

02:27:51

15 **Q.** So is it the case in the lead-up to Senator West's  
16 question about targeting a Democratic district that you  
17 and he had discussed the racial changes that had been  
18 happening in Tarrant County in Senate District 10?

19 **A.** Yes, sir.

02:28:03

20 **Q.** Had you spent the rest of that debate prior to that  
21 moment making it clear to all your colleagues that when  
22 you draw lines on the basis of partisanship in Tarrant,  
23 you are drawing them on the basis of race?

24 **A.** Yes. That's obvious, yes, sir.

02:28:17

25 **Q.** And you recall the task for coming in here and having

1 prepared back during the debates? Do you recall those  
2 questions, having some questions to ask of Senator  
3 Huffman, being prepared in meetings with documents? Do  
4 you recall Mr. Sweeten's questions?

02:28:32

5 **A.** Yes.

6 **Q.** Why did you prepare for these things?

02:28:46

7 **A.** Well, personally, I'm a prepared person. I don't like  
8 to go into -- onto the floor of the Senate or into a  
9 committee hearing without preparing and understanding the  
10 legislation that I am looking at.

11 And, certainly, I feel that same way about Senate  
12 District 10. I wanted to be prepared for the meeting, and  
13 I wanted to be prepared to represent the citizens of  
14 Senate District 10.

02:29:01

15 This is a redistricting gerrymander that impacts the  
16 voting rights of citizens across Senate District 10, and  
17 they elect me to represent them, and I am very serious in  
18 my considerations. I am very serious in trying to do my  
19 homework, being well-informed, and to represent my  
20 citizens in the way that they deserve.

02:29:29

21 MR. DUNN: Pass the witness.

22 JUDGE GUADERRAMA: Okay, Mr. Dunn.

23 Mr. Sweeten.

24 MR. SWEETEN: Just a couple, Your Honor.

02:29:48

25 **RECROSS-EXAMINATION**

1 BY MR. SWEETEN:

2 Q. After the discussion about the Attorney General  
3 that -- the individuals from the Attorney General's  
4 office, did you reach out and ask a follow-up question for  
5 additional information?

02:30:00

6 A. I did not personally, and I am unaware of my staff.

7 Q. Okay.

8 MR. SWEETEN: I have no further questions. Thank  
9 you.

02:30:15

10 THE WITNESS: Thank you, Mr. Sweeten.

11 MR. DUNN: Nothing further.

12 JUDGE GUADERRAMA: Senator, thank you so much.

13 You are free to go.

14 THE WITNESS: Thank you, Judge.

02:30:26

15 JUDGE GUADERRAMA: You won't be needing the  
16 Senator in your case, will you?

17 MR. SWEETEN: No, Your Honor. We will not.

18 JUDGE GUADERRAMA: Mr. Dunn.

19 MR. DUNN: Your Honor, at this time, we call

02:30:36

20 Representative Chris Turner. Mr. Gaber will be handling  
21 the examination.

22 JUDGE GUADERRAMA: Good afternoon, Representative  
23 Turner. If you'll raise your right hand, sir, and receive  
24 the oath.

02:31:48

25 REPRESENTATIVE TURNER: (Complying.)

1 JUDGE GUADERRAMA: Do you solemnly swear or  
2 affirm the testimony you give in this proceeding will be  
3 the truth, the whole truth and nothing but the truth, so  
4 help you God?

02:31:54

5 THE WITNESS: Yes, I do.

6 JUDGE GUADERRAMA: Thank you, sir. You can have  
7 a seat right here.

8 THE WITNESS: Thank you.

02:32:03

9 JUDGE GUADERRAMA: Mr. Gaber, whenever you are  
10 ready.

11 **REPRESENTATIVE CHRISTOPHER GREGORY TURNER,**  
12 having been first duly sworn, testified as follows:

13 **DIRECT EXAMINATION**

14 BY MR. GABER:

02:32:05

15 **Q.** Good afternoon, Representative Turner. Could you  
16 please state your name for the record.

17 **A.** Chris Turner. My full name is Christopher Gregory  
18 Turner.

19 **Q.** Are you an elected official?

02:32:13

20 **A.** Yes.

21 **Q.** What office do you hold?

22 **A.** I'm a state representative representing District 101  
23 in Tarrant County.

24 **Q.** How long have you represented District 101?

02:32:21

25 **A.** I have represented District 101 for just under ten

1 years. My total service through the legislature is right  
2 at 11 years. I previously represented District 96 for one  
3 term.

02:32:38

4 **Q.** Do you hold any leadership roles in the House of  
5 Representatives?

6 **A.** Yes, I do. I am the Chairman of the House Committee  
7 on Business & Industry. I also serve as Chairman of the  
8 House Democratic Caucus.

02:32:51

9 **Q.** Are you familiar with the demographic makeup and  
10 communities in Tarrant County?

11 **A.** Yes. I would consider myself fairly familiar with  
12 those.

13 **Q.** Are you familiar with the process by which the House  
14 passed SB-4 during the recent redistricting cycle?

02:33:06

15 **A.** Yes.

16 **Q.** You submitted a declaration in this case about that  
17 process; is that right?

18 **A.** Yes, I did.

02:33:13

19 MR. GABER: And for the Courts' record, that's  
20 Plaintiffs' Exhibit Number 24.

21 BY MR. GABER:

22 **Q.** What is your general impression of the House  
23 proceedings regarding the redistricting process?

02:33:27

24 **A.** My general impression is that the House proceedings  
25 overall, with respect to redistricting overall, is that

1 they were rushed. And there was not due consideration  
2 given to public testimony that we heard throughout the  
3 redistricting process. There was not due consideration  
4 given to feedback from members of the legislature  
02:33:55 5 representing majority-minority communities.

6 **Q.** Do you serve on the House Redistricting Committee?

7 **A.** Yes, I do.

8 **Q.** And how many hearings were there on the State Senate  
9 plan in the House Redistricting Committee?

02:34:09 10 **A.** On the actual State Senate plan, the bill, there was  
11 one hearing.

12 **Q.** And you attended that hearing?

13 **A.** Yes, I did.

14 **Q.** Do you recall Chair Hunter making comments at the  
02:34:21 15 beginning of the hearing about the process that had  
16 happened in the Senate?

17 **A.** Yes. He -- in the bill layout, he described in  
18 general terms what the Senate had done.

19 **Q.** And we're going to play a clip. This is Defendants'  
02:34:41 20 Exhibit Number 67, minute 7:28 through 8:14.

21 (Defendants' Exhibit Number 67 played, as follows:)

22 "REPRESENTATIVE MURR: And then for purposes of just  
23 consideration in this map, traditional process has been  
24 that the Senate works diligently to arrive at this map.

02:35:04 25 And so what we have here, and just to kind of clarify on

1 Monday morning, has been a lot of work that's been put in  
2 by the Texas Senate and through the discussion and the  
3 public process on their side?

4 "CHAIR HUNTER: I'm going to always be positive, and  
02:35:21 5 I'm going to always be constructive. They've put in their  
6 work. They have put in their analysis, and we have  
7 received their bill. And I'm going to presume they  
8 followed their procedures and done everything they are  
9 supposed to do."

02:35:38 10 (Defendants' Exhibit Number 67 concluded.)

11 BY MR. GABER:

12 **Q.** For the record, Representative Turner, could you  
13 identify the representative that asked the question in the  
14 beginning of that clip?

02:35:44 15 **A.** That was Representative Andrew Murr.

16 **Q.** And was that Chair Hunter who responded?

17 **A.** Yes, that was Chairman Hunter.

18 **Q.** Now, before this meeting happened, had you and the  
19 other members of the House Redistricting Committee

02:35:59 20 received any correspondence from Senator Powell about the  
21 changes to Senate District 10?

22 **A.** Yes.

23 **Q.** Did that letter give you cause to believe that perhaps  
24 trusting the process in the Senate might not be the best  
02:36:15 25 idea?

1 **A.** Absolutely. I think Senator Powell explained in  
2 detail why the process had yielded a very bad result for  
3 Senate District 10 and Tarrant County.

02:36:32

4 **Q.** And what did you take from the statement there in that  
5 video clip from Chair Hunter about trusting the process  
6 and moving on?

02:36:53

7 **A.** What I heard in that clip was, you know, a lot of  
8 words that probably didn't really mean a whole lot. There  
9 are some broad generalities about process and procedure  
10 and work and -- but there was very little to nothing about  
11 the substance of what was actually in the bill that we had  
12 before us that day.

02:37:12

13 **Q.** How does that relate to other bills that are laid out  
14 in committees that you've served on? Is that sort of  
15 verbiage, is that usually meaningful?

02:37:35

16 **A.** I'd say that's atypical of what we would typically  
17 hear on any given bill, irrespective of the subject  
18 matter. It's typically the bill author. In this case,  
19 the bill sponsor. It's a Senate bill. It's a House  
20 sponsor. It would describe what is in the bill and be  
21 able to answer substantive questions about the legislation  
22 from other members of the committee.

02:37:54

23 **Q.** Given the letter that the committee had received from  
24 Senator Powell, did you consider that to be an appropriate  
25 course of action for how to treat this bill in the House

1 committee?

2 **A.** No. My belief was that, as we do on virtually any  
3 other piece of legislation, you know, bills, by  
4 definition, have to be passed by the House and the Senate.  
02:38:13 5 And the legislative process, by definition, requires input  
6 from both chambers. And on a regular basis we receive  
7 House bills, and we change them and try to make them  
8 better. And conversely, the Senate will do the same to  
9 House bills on a regular basis.

02:38:36 10 So simply saying, well, this is what the Senate did  
11 and we think that everything is fine is very atypical of  
12 the legislative process.

13 **Q.** Now, is it sometimes the case in the past that the  
14 House tends to focus on its redistricting plan and the  
02:38:52 15 Senate tends to focus on its redistricting plan?

16 **A.** Yes. That's true.

17 **Q.** Are you aware of another instance where there has been  
18 a specific Senate district that had a federal court order  
19 about it and a similar approach was taken that was the  
02:39:09 20 subject of that order?

21 **A.** I can't think of another such instance, no.

22 **Q.** Would you expect, among your colleagues, to have a  
23 level of concern, then, for changes to a district that had  
24 been subject to a federal court order that might cause  
02:39:27 25 them to take a look at that Senate map, even though the

1 Senate was the one that adopted it?

2 **A.** Yes. Absolutely. I thought that members of the House  
3 would have concerns given that previous court order and  
4 raise more questions about the map the Senate had passed.

02:39:47

5 **Q.** The House had to adopt that court interim remedy back  
6 in 2013, right?

7 **A.** That's correct.

02:40:01

8 **Q.** And so the House had actually passed Senate District  
9 10 in its benchmark configuration following that court  
10 order?

11 **A.** That's right.

12 **Q.** And is it your understanding that that was at the  
13 advice of then Attorney General Abbott?

02:40:10

14 **A.** Yes, it definitely was. It was a special session  
15 called for that purpose, and it was on the advice of  
16 General Abbott. That was the general understanding at the  
17 time.

02:40:23

18 **Q.** And is it your understanding that that was sort of a  
19 similar approach that occurred with respect to  
20 Congressional District 33, that that also had been the  
21 subject of a court order?

22 **A.** Yes.

02:40:40

23 **Q.** And did that order put CD-33 together so that the  
24 minority communities in the Fort Worth area were in one  
25 Congressional district?

1 **A.** Yes. It did do that.

2 **Q.** The House also adopted a Congressional plan; is that  
3 right?

4 **A.** Yes.

02:40:49

5 **Q.** And how was Congressional District 33 treated in the  
6 Fort Worth area?

7 **A.** In the Congressional plan in the House the legislature  
8 adopted that Congressional District 33 maintains its core  
9 populations in Tarrant County, largely unifying the  
10 majority-minority communities in particular within the  
11 City of Fort Worth.

02:41:12

12 **Q.** And so in that instance the Congressional plan adhered  
13 to the court order from 2012 and the interim plan that had  
14 been put in place by the federal court?

02:41:32

15 **A.** Yes. The plan adopted did not deviate much from the  
16 previous decade's plan that the legislature had adopted in  
17 2012.

18 **Q.** And to be clear, my question is about, you know,  
19 specifically the treatment of the core Fort Worth area  
20 with the Hispanic and African-American communities; is  
21 that right?

02:41:48

22 **A.** Yes. Absolutely. Specifically, southeast Fort Worth,  
23 Forest Hill, River Bend, and the north side of Fort Worth.

24 **Q.** Now, during that committee hearing that we showed the  
25 clip from earlier, was there a question, from your

02:42:04

1 recollection, about the opportunity to ask questions of  
2 the Senate and/or to make amendments during the committee  
3 process?

02:42:25

4 **A.** Yes. I recall, you know, trying to ask some questions  
5 of the bill's sponsor, who in this case is Chairman  
6 Hunter; and he largely deferred to what the Senate had  
7 done, their process, and wasn't able to answer specific  
8 questions about the plan itself.

02:42:46

9 With respect to amendments, my recollection is he said  
10 that amendments would be allowed in the committee; but we  
11 would be doing this all in one day. So the amendments had  
12 to be offered in that same meeting; and, ultimately, we  
13 would vote on the bill in that -- in that same meeting.

02:43:06

14 **Q.** And we'll play a clip of that for you to take a look.  
15 That's Defendants' Exhibit 67, 11:26 through 12:26.

16 (Defendants' Exhibit Number 67 played, as follows:)

17 "REPRESENTATIVE TURNER: -- what her or the  
18 Senate's criteria is for defining a minority coalition  
19 district?

02:43:24

20 "CHAIR HUNTER: I am not aware.

21 "REPRESENTATIVE TURNER: Okay. So we wouldn't  
22 know why some districts are on that list and some  
23 districts, such as Senate District 10, are not on that  
24 list?

02:43:33

25 "CHAIR HUNTER: And I'm sure those inquiries to

1 any of us could be made to the Senate and talk to them and  
2 we could have been doing that as well, too. So that's  
3 still open to talking with them at any time.

02:43:46

4 "REPRESENTATIVE TURNER: Okay. Thank you,  
5 Chairman.

6 "CHAIR HUNTER: Thank you. Any other questions?  
7 Thank you, members.

8 "REPRESENTATIVE ANCHIA: Mr. Chairman, one last  
9 question.

02:43:54

10 "CHAIR HUNTER: Oh, Chairman Anchia.

11 "REPRESENTATIVE ANCHIA: Thank you, Mr. Chairman.  
12 Will there be a process for amending the Senate map in  
13 committee?

02:44:04

14 "CHAIR HUNTER: If you have an amendment, please  
15 let us know. Yes, sir.

16 "REPRESENTATIVE ANCHIA: Just on a rolling basis?

17 "CHAIR HUNTER: Yes.

18 "REPRESENTATIVE ANCHIA: Okay. Very good.

02:44:12

19 "CHAIR HUNTER: But we do plan to vote today. So  
20 if you are going to, I'll ask that you try to do that  
21 today.

22 "REPRESENTATIVE ANCHIA: Very good. Thank you."

23 (Defendants' Exhibit Number 67 concluded.)

24 BY MR. GABER:

02:44:19

25 Q. Now, Representative Turner, were you the person that

1 asked the initial question of Chair Hunter during that  
2 exchange?

3 **A.** Yes.

4 **Q.** Is the second representative Representative Anchia?

02:44:28

5 **A.** That's correct.

6 **Q.** And where is Representative Anchia's State House  
7 district?

8 **A.** In Dallas County.

02:44:40

9 **Q.** Now, in the beginning of that, Chair Hunter suggested  
10 that if you had questions about the Senate process you  
11 could, you know, from that committee hearing, take those  
12 questions to the Senate; is that -- is that correct?

13 **A.** That's what he seemed to be saying, yes.

14 **Q.** And what did you take from that suggestion?

02:45:00

15 **A.** Well, I thought it was atypical because, as I  
16 mentioned earlier, typically when we have a Senate bill  
17 before a House committee, the House sponsor of that Senate  
18 bill typically tries to answer questions from the  
19 committee members.

02:45:20

20 **Q.** Would there have been time during the hearing for you  
21 to take up Chair Hunter's suggestion to ask questions of  
22 the Senate?

23 **A.** No, I don't believe there was. We -- my recollection  
24 of this day is that shortly after this dialogue that we  
25 just heard, we went into public testimony. I certainly

02:45:37

1 wanted to be present to listen to the public testimony.

2 And then from there, we were going on to any  
3 amendments and then voting on the bill. So it wasn't  
4 practical to go and track down senators to try to ask them  
5 why they adopted the plan as they did.

02:45:57

6 **Q.** Did Representative Hunter give the committee members  
7 any prior notice before the hearing, the committee members  
8 as a whole, that there would be a vote happening that day?

9 **A.** No. Not that I recall.

02:46:13

10 **Q.** Did he give any notice that any amendments should be  
11 provided to the committee during the committee hearing?

12 **A.** Not that I recall.

13 **Q.** Was there any opportunity to consider the public  
14 testimony that you heard that day and make changes, for  
15 example, to the plan based on that?

02:46:36

16 **A.** No, there was not; and it's why the process was  
17 unusual. Because, typically, we hear a bill in committee  
18 and the Chair typically leaves the bill pending to allow  
19 the committee members to absorb the testimony they have  
20 heard and consider whether they want to propose amendments  
21 or a committee substitute bill. But, obviously, the way  
22 this proceeding unfolded, there was not a lot of time to  
23 do that.

02:46:58

24 **Q.** Were any changes made based on the public testimony?

02:47:14

25 **A.** No.

1 Q. What is your assessment, then, of the purpose of the  
2 hearing that day?

3 A. To go through the motions.

4 Q. Was SB-4 voted out of the committee?

02:47:26

5 A. Yes, it was.

6 Q. And what happened after SB-4 was voted out of the  
7 committee?

8 A. Committee adjourned and we took it up on the floor a  
9 few days later.

02:47:44

10 Q. Do you recall Representative Hunter identifying  
11 Senator Huffman's redistricting priorities when he laid  
12 the bill out on the floor of the House?

13 A. I recall a very broad and general bill layout that  
14 spoke to the Senate's approach with respect to Senate  
15 Bill 4.

02:48:09

16 Q. And we'll play Defendants' Exhibit Number 69, 0:53  
17 through 1:30.

18 (Defendants' Exhibit Number 69 played, as follows:)

19 "REPRESENTATIVE HUNTER: At that hearing I laid  
20 out what we heard the Senate's goals and priorities were,  
21 which included following all applicable law, equalizing  
22 population across districts, preserving political  
23 subdivisions and communities of interest when possible,  
24 preserving the cores of previous districts to extent  
25 possible, avoiding pairing incumbents, achieving

02:48:19

02:48:42

1 geographic compactness, and accommodating incumbent  
2 priorities to the extent possible. Propose the --"

3 (Defendants' Exhibit Number 69 concluded.)

4 BY MR. GABER:

02:48:58

5 **Q.** Did you hear Representative Hunter mention partisan  
6 considerations as one of the redistricting committee's  
7 priority on the Senate side?

8 **A.** I did not.

02:49:11

9 **Q.** Do you know how Representative Hunter came to know  
10 those priorities?

11 **A.** The priorities that he described that we just saw?

12 **Q.** Right.

02:49:26

13 **A.** My understanding was that he had been provided some  
14 talking points from the Senate and that's what he was  
15 reading from.

16 **Q.** If the -- if the priorities didn't reflect what the  
17 Senate thought the priorities were, do you think that they  
18 could have communicated them?

19 **A.** I would think.

02:49:40

20 **Q.** Now, what was your assessment of Senate District 10's  
21 proposed changes with respect to the priorities that were  
22 listed?

02:49:58

23 Take equalizing population, for example. Did it seem  
24 to you that it was necessary to make the changes to SD-10  
25 that SD-4 made in order to equalize population in the

1 plan?

2 **A.** While some districts certainly needed population  
3 equalization, Senate District 10 actually was very close  
4 to the ideal population in the benchmark plan. So my  
02:50:17 5 belief was it did not require major changes or really any  
6 changes at all.

7 **Q.** And did representatives offer amendments that, in  
8 fact, equalized the population in the plan but didn't  
9 change SD-10?

02:50:30 10 **A.** Yes.

11 **Q.** What about the compactness criteria? What was your  
12 assessment of whether or not SD-10 is compact in the new  
13 Senate plan?

14 **A.** I would say in this instance they did the opposite of  
02:50:51 15 the stated principle. They took a compact Senate District  
16 10 that was wholly contained within Tarrant County and  
17 stretched it out over, I think, a total of seven counties  
18 going a couple of hundred miles to the west and then  
19 taking in Johnson County to the south. So they took a  
02:51:09 20 compact district and made it very -- very much uncompact.

21 **Q.** How about communities of interest? How did the SB-4  
22 treat the communities of interest in Tarrant County with  
23 respect to SD-10?

24 **A.** I think communities of interest in Tarrant County were  
02:51:29 25 broken apart and disrespected in this process. Fort Worth

1 was split up unnecessarily. The southeast part of the  
2 district in Arlington and Mansfield were broken up  
3 unnecessarily. And so I don't think communities of  
4 interest were respected at all in this drawing of SD-10.

02:51:57

5 **Q.** And how about any shared interests or traditionally  
6 shared interests between sort of the core of Fort Worth  
7 and the counties that were adjoined to SD-10?

02:52:26

8 **A.** Yeah. Again, I think that this map is a betrayal of  
9 that stated principle because, obviously, the communities  
10 within Tarrant County, within Fort Worth and surrounding  
11 communities, obviously, do have a shared community of  
12 interest.

02:52:42

13 It is -- it is hard for me to identify a shared  
14 community of interest between Fort Worth and rural  
15 counties out near Abilene or even counties like Johnson  
16 County to the south of Tarrant County. So I don't think  
17 there are like communities of interest in this drawing of  
18 SD-10.

02:52:59

19 **Q.** Can you talk a little bit, as a representative and a  
20 politician, about what is the importance of communities of  
21 interest and keeping them whole? Why does that matter in  
22 redistricting?

02:53:24

23 **A.** Well, I think it matters for a few different reasons.  
24 One, so that voters who live in similar communities and  
25 have similar interests are able to coalesce and elect

1 elected officials who will represent their interests.

2 And so -- and we see that, you know, throughout our  
3 politics, I think. You know, my House district, for  
4 example, in southeast Tarrant County is a very urban and  
02:53:48 5 suburban mix of people that my constituents' concerns are  
6 very different from a fellow House member, say, in  
7 Anderson County which is very rural. They have a  
8 different set of concerns.

9 And so I think it helps the voters to be able to elect  
02:54:11 10 people who are from their community and understand their  
11 interests and not have constituencies with divergent  
12 interests at times.

13 **Q.** And beyond just voting on legislation that might be in  
14 the shared view of the constituents, are constituent  
02:54:32 15 services affected by fracturing traditional communities of  
16 interest?

17 **A.** Yes, I think they are. I think, you know, one, just  
18 logistically, you know, one of the most important things  
19 we do is constituent services; and you have district  
02:54:51 20 offices or a district office that responds to constituent  
21 needs.

22 And so having a district office in Tarrant County,  
23 will constituents in, you know, a far-flung, outlying  
24 county be able to readily access those services or, vice  
02:55:12 25 versa, if the office was on the other end of the district,

1 would constituents of Fort Worth be able to access that  
2 office, I think that's certainly a question.

3 And, again, there could be divergent interests. You  
4 might -- in a rural area you might need staff that's very  
02:55:26 5 knowledgeable about issues specific to that area -- you  
6 know, agricultural issues or rural water issues -- versus  
7 a totally separate set of priorities in a more urban  
8 setting.

9 **Q.** You mentioned that your district has a large Black and  
02:55:40 10 Latino population; is that right?

11 **A.** It does, very.

12 **Q.** And can you talk a little bit about some of the  
13 specific constituent services that are unique to those  
14 communities and your role as a representative that may not  
02:55:51 15 be the same for rural White voters?

16 **A.** Sure. I would say that a lot of the constituent  
17 services that my office is involved in pertain to  
18 certainly unemployment insurance over the last couple of  
19 years, in particular with the pandemic.

02:56:11 20 We deal with a lot of Medicaid issues. We have a lot  
21 of families with children on Medicaid or in the CHIP  
22 program, and that requires us to have specialized skill  
23 and experience working on those issues.

24 Child support issues are another we have spent a lot  
02:56:28 25 of time on. So those would be some examples that I think

1 are particularly relevant in an urban and suburban area  
2 such as the one I represent.

02:56:50

3 **Q.** Were you concerned in seeing how SD-10 had been  
4 treated in the plan, that those types of unique needs of  
5 its constituents, its Black and Latino constituents, may  
6 not be met if they were a small part of the electorate in  
7 the district?

8 **A.** Yes. That was absolutely one of my concerns.

02:57:16

9 **Q.** Did you speak on the House floor regarding the Senate  
10 Bill 4?

11 **A.** Yes.

12 **Q.** We'll pull up Defendants' Exhibit Number 69, 8:45  
13 through 9:24.

14 (Defendants' Exhibit Number 69 played, as follows:)

02:57:29

15 "REPRESENTATIVE TURNER: -- 2020 census revealed  
16 tremendous population growth among African-American,  
17 Hispanic, Asian-American communities in both Dallas and  
18 Tarrant Counties. At the same time, the Anglo population  
19 of Dallas County decreased by 5.4 percent and in Tarrant  
20 County by 8.9 percent.

02:57:45

21 "This proposed Senate plan creates zero additional  
22 minority opportunity districts in either Dallas or Tarrant  
23 Counties. In fact, it eliminates the only Tarrant County  
24 district in which African-Americans and Hispanics in Texas  
25 can come together to elect the candidates of their choice.

02:58:03

1 And that district is Senate District 10."

2 (Defendants' Exhibit Number 69 concluded.)

3 BY MR. GABER:

02:58:13

4 **Q.** Representative Turner, can you describe this large  
5 posterboard that you have displayed in the well of the  
6 House floor? What does it show?

7 **A.** Yes. That's a map of Tarrant County with Senate  
8 district boundaries and the shading on the map represents  
9 combined Black and Hispanic population.

02:58:37

10 **Q.** And did you do anything else to make your House  
11 colleagues aware, besides your speech and besides having  
12 this large placard of what the -- how SB-4 treated the  
13 Black and Latino and Asian voters in Senate District 10?

02:59:06

14 **A.** In addition to having this map on the easel up at the  
15 front, I also had smaller versions of it printed and  
16 distributed on each member's desk on the House floor.

17 **Q.** And did you mention the fact that you had done that,  
18 placed the 150 maps on each of the House members' desks,  
19 during the course of your remarks?

02:59:23

20 **A.** Yes, I did. I brought the membership's attention to  
21 that and encouraged them to look at the map before they  
22 voted on the amendments.

23 **Q.** And did you see in the House that the maps actually  
24 were visible on the House members' desks?

02:59:37

25 **A.** Yes, I did.

1 Q. Now, we talked a little bit about CD-33 and how that,  
2 in the new plan, kept the Fort Worth minority community  
3 together. Are you familiar with the State Board of  
4 Education plan that was adopted?

02:59:50

5 A. Yes, I am.

6 Q. How did that treat the Fort Worth minority community?

03:00:11

7 A. Like CD-33, it largely keeps together the heavily  
8 Black and Hispanic areas of Fort Worth within the same  
9 State Board of Education district, similar to the existing  
10 district boundaries.

11 Q. Does the lines that are chosen and the communities  
12 that are kept together, does that reflect sort of the  
13 substantive policy of the legislature in adopting the  
14 redistricting maps?

03:00:24

15 A. I think it does, yes.

16 Q. And would it seem to you to be a departure from that  
17 consistent policy across the other maps for the State  
18 Senate map and only the State Senate map to crack apart  
19 those Fort Worth minority communities?

03:00:39

20 A. Yes, absolutely.

21 Q. Now, Representative Turner, you broke -- participated  
22 in breaking quorum in the summer of 2021; is that right?

23 A. Yes. That's right.

24 Q. And why did you do that?

03:00:57

25 A. That was to delay the passage of what was then SB-1,

1 which was an omnibus anti-voting participation bill that  
2 would have made it more difficult for many Texans to vote.

3 **Q.** Was your participation in that event important to you?

4 **A.** Yes.

03:01:26

5 **Q.** Now, did that happen before or after the Census Bureau  
6 released the redistricting data to the states?

7 **A.** That was before.

8 **Q.** So, in your view, did the quorum break activities last  
9 summer, did that have any impact on the redistricting

03:01:41

10 process?

11 **A.** No.

12 MR. GABER: Thank you, Representative Turner. I  
13 have no further questions.

14 I pass the witness.

03:01:53

15 JUDGE GUADERRAMA: Thank you, Mr. Gaber.

16 **CROSS-EXAMINATION**

17 BY MR. HUDSON:

18 **Q.** For the benefit of the court reporter, my name is Eric  
19 Hudson.

03:02:19

20 Representative Turner, good afternoon. How are you?

21 **A.** Good afternoon. Doing fine. Thank you.

22 **Q.** Are you able to hear me?

23 **A.** Yes. I can hear you fine. Thank you.

24 **Q.** Let's talk a little bit about your redistricting

03:02:28

25 experience in the state of Texas. You would agree that

1 generally the Texas Senate works on their own  
2 redistricting map, right?

3 **A.** Yes.

4 **Q.** And, generally, the Texas House of Representatives  
5 works on its own redistricting map, right?

6 **A.** Yes.

7 **Q.** All right. And you know who Senator Joan Huffman is,  
8 right?

9 **A.** Yes.

10 **Q.** Now, you don't know anybody on her staff, if anyone,  
11 who may have worked on redistricting the Texas Senate map,  
12 right?

13 **A.** Do I know anyone on her staff?

14 **Q.** No. My question is: You don't know anyone on her  
15 staff who may have worked on redistricting with Senator  
16 Joan Huffman, right?

17 **A.** No. No, I don't.

18 **Q.** And you don't recall talking to Senator Joan Huffman  
19 during the first special session of the 87th Special  
20 Legislature about redistricting?

21 **A.** No.

22 **Q.** In fact, from January 2021 to this very day, you  
23 haven't had a single conversation with Senator Huffman  
24 about redistricting, right?

25 **A.** Not about redistricting.

1 Q. Okay. The same question but for her staff. You  
2 haven't talked to any of her staff members about  
3 redistricting from January 1, 2021, to the present, right?

4 A. No.

03:03:32

5 Q. And so that includes the regular session, right?

6 A. Right.

7 Q. The first special session?

8 A. Right.

9 Q. The second?

03:03:38

10 A. Right.

11 Q. And then ultimately the third, right?

12 A. Right.

13 Q. All right. So Joan Huffman, who is the Chair of the  
14 Senate Redistricting Committee, you have no knowledge  
15 about how she conducted redistricting or how she operated,  
16 right?

03:03:46

17 A. No.

18 Q. You are familiar with RedAppl?

19 A. Yes.

03:04:00

20 Q. What is RedAppl?

21 A. It's a -- it's an abbreviation for a redistricting  
22 application which is a Texas Legislative Council software  
23 product that is available to legislators to help us in the  
24 redistricting process.

03:04:16

25 Q. You understand RedAppl has functions that allow users

1 to look at different features of maps based on available  
2 data, right?

3 COURT REPORTER: Hold on a second. Can you  
4 repeat the question, please.

03:04:26 5 JUDGE GUADERRAMA: If you could slow down a  
6 little bit because you are speaking pretty fast.

7 MR. HUDSON: Sure, Your Honor. That's a common  
8 complaint with me. My apologies.

9 BY MR. HUDSON:

03:04:34 10 **Q.** You understand that RedAppl has functions that allow  
11 users to look at different features of maps based on the  
12 available data, right?

13 **A.** Yes.

14 **Q.** For instance, partisan shading can be turned on?

03:04:45 15 **A.** Yes.

16 **Q.** But again, not having talked to Senator Huffman or  
17 anybody on her staff, you have no idea whether Senator  
18 Huffman looked at things like partisan shading, right?

19 **A.** No.

03:04:54 20 **Q.** You have no idea whether it showed things like racial  
21 shading, right?

22 **A.** No.

23 **Q.** And so you are not here to testify to this Court today  
24 that Senator Huffman did or did not use any particular

03:05:04 25 feature of RedAppl when she was conducting redistricting,

1 right?

2 **A.** No, I am not.

3 **Q.** Now, you would agree with me that the Senate is  
4 majority Republican, right?

03:05:14

5 **A.** Yes, it is.

6 **Q.** And there are 18 Republicans on the Senate?

7 **A.** Yes. That's right.

8 **Q.** Thirteen Democrats?

9 **A.** Yes.

03:05:21

10 **Q.** But you know that Senate Bill 4, which is the Senate  
11 map, passed 20 to 11, right?

12 **A.** Yes.

13 **Q.** So it was a bipartisan vote?

14 **A.** Yes. By definition there were a couple of Democrats  
15 that voted for it.

03:05:36

16 **Q.** So at least a couple of Democrats thought the Senate  
17 map was fine, right?

18 **A.** I don't know what they thought about the map overall.

19 **Q.** Well, they certainly voted for it, right?

03:05:45

20 **A.** I would agree they voted for the map.

21 **Q.** Now, you had -- let's talk a little bit about the rush  
22 and the delay that you talked about with your counsel.

23 Now, before we get to that, you had counsel during  
24 redistricting, didn't you?

03:05:57

25 **A.** Yes.

1 Q. Who did you hire as counsel?

2 A. I hired a Chad Dunn as counsel -- to be counsel for  
3 the House Democratic Caucus.

4 Q. That's Chad Dunn right there, right?

03:06:10

5 A. Yes, sir.

6 Q. So he advised you through the entire redistricting  
7 process?

8 A. Yes, he did.

9 Q. Who else?

03:06:15

10 A. I also worked with Mr. Gaber and, more recently,  
11 Mr. Gaines.

12 Q. Okay. These are some of the same lawyers who worked  
13 with the other members of the Senate, for instance, in  
14 helping them with their redistricting issues, right?

03:06:31

15 A. I believe some of them did, yes, sir.

16 Q. Okay. It sounds like a lot of y'all had a lot of the  
17 same representation, right?

18 A. That seems likely, yes.

19 Q. Well, let's talk a little bit about the census data  
03:06:45 20 delay. So you went into session in 2021 knowing that the  
21 census data would not be released in time for the regular  
22 session, right?

23 A. Yes.

03:06:59

24 Q. And, in fact, you knew in 2020, because of the COVID  
25 pandemic, that the census data would be delayed?

1 **A.** Yes. That's right.

2 **Q.** Now, you are aware that the Census Bureau has an  
3 obligation under federal law to provide the census data by  
4 April 1 of 2021, right?

03:07:10

5 **A.** Yes.

6 **Q.** And you are aware that in past redistricting cycles  
7 the census data was released in time for the legislature  
8 to take the matter up during the regular session, right?

9 **A.** Yes.

03:07:20

10 **Q.** In fact, are you aware of any other time in Texas  
11 history where the census data has been delayed such that  
12 redistricting did not occur during the regular session?

13 **A.** I am not, no.

03:07:39

14 **Q.** Okay. Now, you are also aware that in -- that the  
15 U.S. Census data had been published -- had it been  
16 published on time in 2021, the legislature would have been  
17 able to address redistricting before the 87th --

18 COURT REPORTER: Hold on a second. Repeat that,  
19 please.

03:07:44

20 MR. HUDSON: Sure.

21 BY MR. HUDSON:

22 **Q.** You are aware that had the U.S. Census Data been  
23 published on time in 2021, the legislature would have been  
24 able to address redistricting before the end of the 87th

03:08:00

25 Regular Session, right?

1 **A.** We would have had the opportunity to, yes.

2 **Q.** And the Census Bureau did not release the data on  
3 time?

4 **A.** Correct.

03:08:10 5 **Q.** Instead, it was delayed due solely to the COVID-19  
6 pandemic, right?

7 **A.** That's right.

8 **Q.** That wasn't some Republican plan to prevent or delay  
9 redistricting, right?

03:08:20 10 **A.** No. It was the result of the pandemic.

11 **Q.** It wasn't intentional discrimination that resulted in  
12 the census data not being delivered on time, right?

13 **A.** No.

14 **Q.** Now, the Census Bureau did not release preliminary  
03:08:32 15 data until August 12 of 2021; is that right?

16 **A.** Right.

17 **Q.** And it didn't deliver the full redistricting tool kit  
18 until September 16 of '21, right?

19 THE REPORTER: Okay. Hold on a second. Please  
03:08:46 20 start over.

21 BY MR. HUDSON:

22 **Q.** And it didn't deliver the full redistricting tool kit  
23 until September 16 of '21, right?

24 **A.** That sounds right, yes.

03:08:50 25 **Q.** Now, it's about a five-month delay?

1 **A.** I'm sorry. Could you repeat that?

2 **Q.** That's about a five-month delay from when it was  
3 supposed to be delivered in April, right?

4 **A.** Yes.

03:08:59 5 **Q.** For that -- for that reason, no redistricting occurred  
6 in the regular session; is that fair?

7 **A.** That's fair.

8 **Q.** And the Governor and State called a special session?

9 **A.** Yes.

03:09:11 10 **Q.** One of the purposes of the special session was to  
11 enact new legislative maps, right?

12 **A.** The third special session, yes.

13 **Q.** The third call?

14 **A.** Yes.

03:09:20 15 **Q.** For the benefit of the Court, when we're talking about  
16 special session, I understand first special session, no  
17 census data, right?

18 **A.** That's right.

19 **Q.** Second special session, still no census data, right?

03:09:34 20 **A.** Correct.

21 **Q.** So the third special session was the first time that  
22 the Texas Legislature had both the census data and the  
23 time to conduct the redistricting, right?

24 **A.** Yes.

03:09:45 25 **Q.** All right. So will you agree with me that when I

1 refer to the session or special session, I'm referring  
2 only to the third during this testimony? Is that okay?

3 **A.** Yeah. Absolutely.

4 **Q.** Now, how long is a regular session?

03:09:59 5 **A.** A regular session is 140 days.

6 **Q.** How long is a special session?

7 **A.** A maximum of 30 days.

8 **Q.** So in this particular circumstance, the special  
9 session that the redistricting was conducted in, you had  
03:10:15 10 30 days to conduct the entire redistricting that would  
11 have normally been done across 140, right?

12 **A.** Well, I would say that in reality you would not --  
13 even had the census data arrived by April 1st, it would  
14 not have been 140 days to do redistricting. There is  
03:10:40 15 constitutional limitations on when bills can be introduced  
16 and when bills can be heard on the House floor. And so I  
17 think that the available time, had we done it in a regular  
18 session, would have been less than 140 days.

19 **Q.** Certainly more than 30?

03:11:00 20 **A.** Probably, yes. I would guesstimate about two months.

21 **Q.** Now, again, the 30-day special session limit, that's  
22 set by statute, right?

23 **A.** It's in the Constitution, yes.

24 **Q.** Okay. That wasn't a Republican plan to only give you  
03:11:18 25 30 days for redistricting, right?

1 **A.** No.

2 **Q.** It wasn't intentional discrimination that there is  
3 only 30 days to conduct a special session, right?

4 **A.** No.

03:11:25

5 **Q.** And, in fact, candidate filing was November 13 of  
6 2021, right?

7 **A.** That was the first day to file, yes.

8 **Q.** So the special session that got called for  
9 redistricting, that occurred on September 20?

03:11:38

10 **A.** Yes.

11 **Q.** And 30 days puts us at October 20, right?

12 **A.** Yes.

13 **Q.** All right. Now, being a 30-day special session, there  
14 wasn't time for another special session before the  
15 November 13 candidate filing deadline, right?

03:11:50

16 **A.** There would have been. Maybe not a full 30 days, but  
17 a session does not have to last the full 30 days. We have  
18 had special sessions that have lasted two or three days.

19 So, in fact, there was speculation that the Governor  
20 would call a fourth special session to finish  
21 redistricting at that point.

03:12:06

22 **Q.** You would agree, Representative Turner, if you thought  
23 30 days was compressed, surely you think less than 30 days  
24 was really compressed, right?

03:12:17

25 **A.** Of course. I think the thinking was that some

1 progress might have been made in the first 30-day special  
2 session and then the work would be complete in the fourth.

3 **Q.** Let's talk a little bit about Beverly Powell. Now,  
4 you've known Beverly Powell a long time, right?

03:12:32

5 **A.** Yes.

6 **Q.** At least since 2005?

7 **A.** That's right.

8 **Q.** In fact, you are the one who encouraged her to run for  
9 the Senate in 2018?

03:12:39

10 **A.** I did, yes.

11 **Q.** In fact, you are also a Democrat?

12 **A.** Yes, I am.

13 **Q.** Okay. You are also a board member of the House  
14 Democratic Campaign Committee; is that right?

03:12:51

15 **A.** That's right.

16 **Q.** You are also a Democratic Caucus Chair for the Texas  
17 House of Representatives?

18 **A.** That's correct.

19 **Q.** The proper title is Chair of the Texas House  
20 Democratic Caucus; is that right?

03:13:01

21 **A.** That's right.

22 **Q.** Your roles include serving as a minority -- serving as  
23 minority leader in the House?

24 **A.** Yes.

03:13:07

25 **Q.** And that includes facilitating caucus activities?

1 **A.** Yes.

2 **Q.** Also calls for coordinating caucus members' efforts in  
3 the legislature?

4 **A.** Yes.

03:13:16

5 **Q.** And bottom, you move Democratic policies forward in  
6 the Texas House, right?

7 **A.** Yes. That's correct.

8 **Q.** And one of the goals of the Democratic Party in the  
9 legislative session was to have more Democrats elected

03:13:29

10 than not, right?

11 **A.** One of our -- you are talking about a legislative  
12 priority or --

13 **Q.** Well, redistricting is -- redistricting is about  
14 getting people elected, isn't it?

03:13:42

15 **A.** Well, I am -- I would say redistricting is about  
16 drawing districts that are roughly equal in population to  
17 reflect the census figures.

18 **Q.** And if you can do that in a way that elects more  
19 Democrats than Republicans, that would have been a

03:14:01

20 priority of yours, right?

21 **A.** I don't think I ever looked at it that way. As you  
22 have stated, Democrats are the minority in the Texas  
23 Legislature. So enacting a map that would elect more  
24 Democrats wasn't -- wasn't something that we were actively

03:14:26

25 working towards because that simply wouldn't be realistic

1 with Republican majorities.

2 **Q.** So that this three-judge panel is clear, you had no  
3 partisan interests whatsoever in how you handle  
4 redistricting? That's your testimony to this Court?

03:14:41

5 **A.** I don't think that's the question you asked me.

6 **Q.** Well, that is the question I asked you. I guess let  
7 me ask it a different way, since maybe you didn't  
8 understand it the first time around.

03:14:52

9 You had partisan interests in how redistricting was  
10 handled in this special session in 2021, right?

11 **A.** My interests in redistricting were -- given the  
12 circumstances that we were in with the, you know, solid  
13 Republican majorities and a Republican governor, was  
14 working -- first and foremost, working with members of my  
15 caucus to see that their districts were drawn in a way  
16 that fairly reflected their communities' interests and  
17 seeing that the tremendous growth in minority population  
18 in Texas would be more fairly reflected in the maps that  
19 were enacted in the House and the Senate and Congress.

03:15:37

20 And so those were my driving motivations and focus of my  
21 work throughout the redistricting process.

22 **Q.** Yeah. My question was a lot simpler than the one you  
23 just answered. I'm just asking: You are partisan, right?

24 **A.** I'm a Democrat, yes.

03:15:54

25 **Q.** And so you want Democrats to win, and you want

1 Republicans to lose, right?

2 **A.** Sure.

3 **Q.** Now, let's talk a little bit about how you go about  
4 seeing that Republicans lose and Democrats win. During  
03:16:09 5 the first called special session, you were part of a group  
6 that actually absconded from the legislature toward the  
7 end of the first special session; and you flew with a  
8 contingent out to Washington, D.C., to break quorum in the  
9 Texas House; is that right?

03:16:24 10 **A.** Yes.

11 **Q.** All right. And, in fact, you spent four weeks out in  
12 Washington, D.C.; is that right?

13 **A.** That's right.

14 **Q.** And you were successful in stopping legislation from  
03:16:34 15 being passed in the first special session; is that right?

16 **A.** Yes.

17 **Q.** In fact, you were so pleased, you sent out a tweet  
18 about how you had stopped the legislation, right?

19 **A.** I probably did, yeah.

03:16:45 20 **Q.** Well, in fact, you sent a tweet out on August 6th,  
21 2021, declaring victory by, quote/unquote, killing an  
22 election integrity bill that was drafted during the first  
23 called special session, right?

24 **A.** I don't think I called it an election integrity bill.

03:17:02 25 **Q.** Well, because you are partisan, right, you wouldn't

1 call it that?

2 **A.** No. Because it wasn't an election integrity bill. It  
3 was an anti-voter bill, and we did kill it. I probably  
4 tweeted something to that effect.

03:17:13

5 **Q.** Let me ask you this, Representative Turner: You would  
6 agree with me that you've never heard a Republican call  
7 SB-1 an anti-voter bill, right?

8 **A.** I have not.

03:17:26

9 **Q.** Okay. You have heard plenty of Democrats call it  
10 that, right?

11 **A.** Sure.

12 **Q.** That's partisan, right?

13 **A.** No, I don't. I think it's factual.

14 MR. HUDSON: May I approach, Your Honor?

03:17:35

15 JUDGE GUADERRAMA: Yes.

16 BY MR. HUDSON:

03:18:07

17 **Q.** Go ahead and take a look at that. Representative  
18 Turner, having looked at that tweet, does that refresh  
19 your recollection of whether you sent out a tweet  
20 declaring victory for killing SB-1?

21 **A.** Yes.

22 **Q.** All right. And so you did, in fact, send out a tweet  
23 on August 6, 2021, declaring victory for having killed  
24 SB-1, right?

03:18:19

25 **A.** Yes, I did.

1 Q. Now, three days later you sent out another tweet that,  
2 quote, "Every day the House can't move forward with  
3 Republican anti-voter legislation is a good day," end  
4 quote.

03:18:30 5 Do you recall sending out that tweet?

6 A. That sounds familiar, yes.

7 Q. Again, your whole purpose was to delay voting to slow  
8 down Republican legislation; is that right?

9 A. Specific to that particular bill, yes.

03:18:44 10 Q. Well, so if your goal is to slow everything down, I  
11 mean, everything feels kind of rushed, right?

12 A. I -- I don't think I understand the question.

13 MR. HUDSON: If I could have just a moment, Your  
14 Honor.

03:18:57 15 JUDGE GUADERRAMA: Yes.

16 (Sotto voce discussion between defense counsel.)

17 MR. HUDSON: Pass the witness, Your Honor.

18 JUDGE GUADERRAMA: Thank you, Mr. Hudson.

19 Mr. Gaber.

03:19:23 20 **REDIRECT EXAMINATION**

21 BY MR. GABER:

22 Q. Representative Turner, was there a piece of  
23 legislation passed by the legislature last year that  
24 foresaw the potential that more than one special session  
03:19:52 25 might be needed to conduct the redistricting process?

1 **A.** Yes, there was.

2 **Q.** And did that set a series of deadlines that would  
3 change depending on when the redistricting bill were  
4 enacted?

03:20:07

5 **A.** It did. It provided, as I recall, several different  
6 scenarios and adjusted the filing period and the primary  
7 dates accordingly.

03:20:28

8 **Q.** So the law of Texas was that December 13th might  
9 actually not be the final day for candidate filing if  
10 redistricting were not completed in time for that to  
11 functionally happen? Is that the case?

12 **A.** That's right. The legislature contemplated that it  
13 could well be later and might necessitate a later filing.

03:20:51

14 **Q.** Was there time in the 30-day special session to spend  
15 more than one day in the House committee hearing on the  
16 Senate plan and provide opportunity for the members to  
17 think about amendments, consider the public input, and  
18 make changes before the bill was voted out of the  
19 committee?

03:21:09

20 **A.** Yes. There absolutely was. We got a slow start in  
21 the House committee process in that third special session  
22 to where everything was backloaded at the end of that  
23 session.

03:21:30

24 **Q.** Did Chair Hunter suggest during the committee meeting  
25 that the end of the special session posed some problem for

1 why there couldn't be an additional day of consideration?

2 **A.** No. I don't recall him expressing that.

3 **Q.** Was there any opportunity to have resource witnesses  
4 during that committee hearing?

03:21:51 5 **A.** No. There was not.

6 **Q.** Is that common in the House?

7 **A.** No. It's very unusual. In fact, I really can't think  
8 of another example of when that's not been -- resource

9 witnesses have not been made available to members of the  
03:22:08 10 committee on any legislation.

11 **Q.** Did you have the opportunity to hear from expert  
12 witnesses in the House?

13 **A.** We heard from some experts, such as the state  
14 demographer and a couple of others, in the hearings that  
03:22:36 15 were held in the regular session and at the beginning of  
16 the first special session, but not any during the session  
17 in which we actually had the redistricting data or the  
18 census data available to us and there were actually maps  
19 being proposed.

03:22:56 20 **Q.** Did you inquire of Chair Hunter of the opportunity to  
21 have expert testimony after the census data was released  
22 and after the redistricting plans were put in place or  
23 proposed, rather?

24 **A.** Yes, I did.

03:23:11 25 **Q.** And what was the response?

1 **A.** We first raised this in the House -- the House map  
2 proceedings and subsequently raised it with respect to the  
3 other bills.

03:23:37

4 And at first the Chairman had indicated to one of my  
5 colleagues that we would -- he would allow for us to  
6 invite experts to testify, but that seemingly just never  
7 happened. And when we got actually on the bills, we had  
8 the bills before us in committee, he said that wasn't  
9 going to be possible in those hearings.

03:24:00

10 And, similarly, when I asked about resource witnesses  
11 from the Texas Legislative Council, for example, or the  
12 Secretary of State or the Attorney General's office, he  
13 said something to the effect of maybe at some point we'll  
14 be able to have them but not right now.

03:24:22

15 **Q.** Has that ever happened before in your tenure in the  
16 House of Representatives?

17 **A.** No. Never that I can recall.

03:24:39

18 **Q.** If you had wanted to have an expert witness on, say,  
19 the Voting Rights Act or the constitutional requirements  
20 for redistricting, how long would those experts have had  
21 to testify to the House Redistricting Committee on the  
22 Senate bill?

03:24:59

23 **A.** So that's ultimately up to the Chair of the committee,  
24 as the Chairman sets the rules. But, generally speaking,  
25 invited expert witnesses are afforded a lot of latitude

1 and given a generous amount of time to make their  
2 presentation. Certainly more time than was allotted to  
3 members of the public who were limited to three minutes  
4 for their testimony.

03:25:18

5 **Q.** And in this instance, since the Chair wouldn't allow  
6 the invited expert testimony, were expert witnesses --  
7 would they have been limited to those three minutes?

8 **A.** Yes. And they were limited to those three minutes.

03:25:38

9 **Q.** Have you ever seen that before in the House of  
10 Representatives?

11 **A.** I can't say that I have seen that before, particularly  
12 on an issue this complex and an issue that we, by  
13 definition, only deal with once a decade. It was very,  
14 very unusual. It was something that I had not experienced  
15 before myself.

03:25:58

16 **Q.** The bill that I mentioned earlier that would have  
17 changed the candidate filing deadlines and the other  
18 election -- and the election dates, that the primary  
19 election dates had an additional special session than  
20 needed or desired, that was SB-13; is that right?

03:26:18

21 **A.** That sounds right, yes.

22 MR. GABER: No further questions.

23 JUDGE GUADERRAMA: Thank you, Mr. Gaber.

24 Mr. Hudson, did you have anything else?

03:26:35

25 MR. HUDSON: Just briefly, Your Honor.

**RECROSS-EXAMINATION**

BY MR. HUDSON:

**Q.** Representative Turner, we talked just a moment ago about how there was a quorum break in the first special session, right?

**A.** Yes.

**Q.** And I presume that the Democratic caucus did not go share its political strategies with Republicans during any of the three special sessions, right?

**A.** Well, what do you mean by "share our strategy"?

**Q.** Let me see if I can ask it like this: You didn't go around telling Republicans a month in advance that you planned to break quorum in the first special session, right?

**A.** No. Although, we didn't know in a month in advance we were going to do that.

**Q.** So Republicans wouldn't have a way to know whether Democrats were or were not going to break quorum in the second special session, for instance?

**A.** No.

**Q.** Or the third, right?

**A.** Yeah.

**Q.** So if Republicans wanted to have a quorum to actually pass legislation, they needed to do it quickly because they just had no idea when you guys might skip town or

1 break quorum, right? Hold that thought.

2 MR. HUDSON: Can you pull up 3 for me.

3 **A.** I'm happy to answer your question. I'm just not sure  
4 I understand the question.

03:27:50

5 BY MR. HUDSON:

6 **Q.** You would agree with me -- if you'll take a look at  
7 the screen, this was Exhibit 3 to your deposition. This  
8 was a notice of public hearing by the House of  
9 Representatives. Do you see that?

03:28:03

10 **A.** Yes.

11 **Q.** You would agree that a committee hearing was set for  
12 10:00 a.m. on Wednesday, July 7 of 2021, right?

13 **A.** Yes.

14 **Q.** And the subject of that meeting was redistricting,  
15 right?

03:28:16

16 **A.** Yes.

17 **Q.** And the place was the Capitol Extension with Chair  
18 Representative Todd Hunter, right?

19 **A.** Yes.

03:28:23

20 **Q.** And read along with me. It reads, "The committee will  
21 meet to hear invited and public testimony from experts and  
22 members of the public on the 2021 legislative  
23 redistricting process. This hearing will focus on the San  
24 Antonio area, but the committee will hear testimony about  
03:28:39 25 any region of the state."

1 Did I read that correctly?

2 **A.** Yes, sir.

3 **Q.** You understood that that meeting was going to take  
4 place, right?

03:28:45

5 **A.** Yes.

6 **Q.** You got the notice, right?

7 **A.** Yes.

03:28:57

8 **Q.** Now, it goes on to say that "The committee will hear  
9 invited testimony from the state demographer regarding  
10 population projections for the State with a focus on the  
11 San Antonio area."

12 Did I read that correctly?

13 **A.** Yes.

03:29:04

14 **Q.** And "The committee invites testimony from the public.  
15 Members of the public who cannot attend the hearing in  
16 person may request to be invited to provide their  
17 testimony virtually by videoconference."

18 Did I read that correctly?

19 **A.** Yes.

03:29:12

20 **Q.** So the meeting is set July 7 to hear from a  
21 demographer, other experts, and invited public testimony,  
22 right?

23 **A.** Yes.

03:29:22

24 MR. HUDSON: All right. Go ahead and pull up 4  
25 for me, would you.

1 BY MR. HUDSON:

2 Q. Do you see that on your screen?

3 A. Yes.

03:29:36

4 Q. This is Exhibit 4 from your deposition. This is a  
5 revision to that notice of public hearing; is that right?

6 A. I'm sorry. I think this is a different public  
7 hearing. The previous one was for a hearing on Wednesday,  
8 July 7th that I thought you showed me.

9 Q. This one was set for July 13th, right?

03:29:55

10 A. Yes.

11 Q. And, again, the subject was redistricting?

12 A. Yes.

13 Q. And this, again, was going to be at the capitol  
14 building with Representative Todd Hunter presiding, right?

03:30:04

15 A. Yes.

16 Q. And that meeting was canceled?

17 A. Yes.

18 Q. And below where it says the meeting is canceled it  
19 reads, "Today's redistricting hearing has been canceled  
20 due to a lack of quorum of the Texas House of  
21 Representatives. A call has been placed on the House to  
22 secure the attendance of absent members; and until a  
23 quorum of the House is secured, no committee hearings may  
24 be conducted."

03:30:12

03:30:23

25 Did I read that correctly?

1 **A.** Yes.

2 **Q.** So when the Democratic Party decided that they were  
3 going to take enough members to break quorum and fly to  
4 Washington, D.C., in a plane, you guys prevented any  
5 further hearings from happening until you returned, right?

03:30:35

6 **A.** Yes.

7 **Q.** So, in effect, you are complaining about things and  
8 problems that the Democratic Party actually caused, right?

9 **A.** No.

03:30:47

10 **Q.** Well, did any Republicans join you on the trip to  
11 Washington, D.C., to break quorum?

12 **A.** No.

13 MR. HUDSON: Pass the witness.

14 JUDGE GUADERRAMA: Mr. Gaber.

03:30:59

15 MR. GABER: I have no further questions, Your  
16 Honor.

17 JUDGE GUADERRAMA: All right. Representative  
18 Turner, thank you so much for coming down. You may step  
19 down.

03:31:06

20 Will the Representative be free to go?

21 MR. GABER: Yes, Your Honor.

22 JUDGE GUADERRAMA: State?

23 MR. SWEETEN: Yes, Your Honor.

24 JUDGE GUADERRAMA: Thank you, sir.

03:31:13

25 Who is your next witness?

1 MR. DUNN: We call Dr. Jeronimo Cortina. Again,  
2 Mr. Gaber is going to do the examination.

3 JUDGE GUADERRAMA: Good afternoon, Dr. Cortina.  
4 If you will raise your right hand, sir.

03:32:19 5 DR. CORTINA: (Complying.)

6 JUDGE GUADERRAMA: You do solemnly swear or  
7 affirm the testimony that you'll give in this proceeding  
8 will be the truth, the whole truth, and nothing but the  
9 truth so help you God?

03:32:27 10 THE WITNESS: I do.

11 JUDGE GUADERRAMA: Thank you, sir. You can have  
12 a seat right there.

13 THE WITNESS: Thank you, Judge.

14 JUDGE GUADERRAMA: Mr. Gaber, whenever you are  
03:32:35 15 ready.

16 **JERONIMO CORTINA, Ph.D,**  
17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 BY MR. GABER:

03:32:37 20 **Q.** Please state your name for the record.

21 **A.** I'm Jeronimo Cortina.

22 **Q.** And how are you employed?

23 **A.** I work for the University of Houston.

24 **Q.** Could you tell the Court a little bit about yourself,  
03:32:48 25 where you grew up, your background?

1 **A.** Sure. I was born in Mexico, Mexico City. I was  
2 raised over there.

03:33:03

3 After finishing high school in Mexico, I came to San  
4 Antonio to finish high school again. I did an extra year  
5 here.

6 And after that, I came back to Mexico to do college.

7 And then I came back to the United States to do my  
8 master's and my Ph.D at Columbia University in New York.

03:33:20

9 **Q.** Now, backing up to your undergraduate education, where  
10 did you complete those studies?

11 **A.** I worked -- I studied my Bachelor's in Business  
12 Administration in ITAM.

13 **Q.** And could you spell that for the court reporter.

14 **A.** It's I-T-A-M.

03:33:39

15 **Q.** And did you give your focus, your major while you were  
16 an undergraduate?

17 **A.** It was business administration.

18 **Q.** What year did you graduate from undergrad?

19 **A.** I believe it was '97.

03:33:54

20 **Q.** And then after undergraduate, where did your studies  
21 take you?

22 **A.** To study a master's in public administration at the  
23 School of International Public Affairs at Columbia  
24 University.

03:34:06

25 And after that, I did my Ph.D in political science at

1 Columbia University.

2 **Q.** What year did you receive your master's degree?

3 **A.** I have two masters' degrees. One in 2003, I believe.

4 That's a master's in public administration. And then I

03:34:26

5 have a master of philosophy that I think it was 2005.

6 And then my Ph.D was 2007.

7 **Q.** And were all of those degrees from Columbia  
8 University?

9 **A.** That is correct.

03:34:45

10 **Q.** What motivated you to pursue the areas that you did in  
11 your education?

12 **A.** Well, my passion, one, for doing research; and also my  
13 passion to study politics and policies.

14 **Q.** And I'm not sure we got it on the record. What was  
15 your Ph.D in?

03:35:02

16 **A.** Political science.

17 **Q.** Who was your advisor for your Ph.D program?

18 **A.** Rodolfo de la Garza.

19 **Q.** And could you spell that, as well, for the court  
20 reporter.

03:35:17

21 **A.** R-o-d-o-l-o-f-o, d-e, l-a, G-a-r-z-a.

22 **Q.** And did he have a particular area of study?

23 **A.** Yes. He studied political behaviors, Latino politics,  
24 elections.

03:35:35

25 **Q.** And did his interests and his academic work influence

1 yours?

2 **A.** Yes.

3 **Q.** How so?

4 **A.** Well, when you have a mentor like him, you work close  
5 together with the faculty. And so usually you choose the  
6 faculty that you want to work with because you are  
7 interested in such topics.

8 **Q.** What were some of the academic areas that you pursued  
9 during your Ph.D program?

10 **A.** Well, I -- my major was in American politics and my  
11 minor was in applied methodology or statistics.

12 **Q.** And can you explain for the Court some of the  
13 statistical methods that you studied and applied while you  
14 were in both graduate school and then your Ph.D program,  
15 in that order?

16 **A.** Yes. So while in grad school, I learned geographic  
17 information systems, GIS, in particular using a software  
18 called ArcMap.

19 I also specialized in causal inference. Those are  
20 quasi-experimental statistical methods, multi-varied  
21 regression analysis and other, I would say, sophisticated  
22 statistical techniques that are employed in academia.

23 **Q.** Can you explain for the Court what "causal inference"  
24 is?

25 **A.** Yes. "Causal inference" is a methodology using

1 observational data when you cannot implement a controlled  
2 experiment to make inferences -- in this case, causal  
3 inference -- of a cause and effect.

4       You use these quasi-experimental methods that mimic  
03:37:17 5 random assignment, the gold standard in experimental  
6 science, to achieve cause and effect of a particular  
7 question that you are trying to answer.

8 **Q.** Can you reduce that to an example, both for my benefit  
9 and for the Courts?

03:37:36 10 **A.** Yes. For example, if you are trying to understand,  
11 you know, if kids that are assigned to a special math  
12 program, all right, you can have kids that you can either  
13 design an experiment and, you know, randomly assign kids  
14 to one treatment, in this case the new math program, and  
03:38:02 15 assign kids to the regular classes. There might be some  
16 opposition because some kids might get better, you know,  
17 techniques to learn math, or whatnot.

18       So you can use that example without going into that  
19 detail by using observational data. And observational  
03:38:22 20 data, depending on the question that you want to answer,  
21 there is going to be a lot of techniques.

22       Like, for example, you can use a method called  
23 differences in differences, and that method allows you to  
24 compare before-and-after data.

03:38:38 25       So you have an external shock, in this case a

1 treatment -- whether it's a new math program, whether it's  
2 external shocking in an election cycle, sudden changing  
3 policy, so on and so forth -- and compare before-and-after  
4 data.

03:38:57

5 And using those differences, those differences between  
6 the before and after, you can mimic to a certain extent a  
7 randomized assignment and, therefore, conclude that the  
8 relationship that you are observing is a causal  
9 relationship or at least as close as it would be with an  
10 experiment.

03:39:16

11 **Q.** What sorts of coursework did you undertake to become  
12 knowledgeable in this type of analysis?

13 **A.** I took, well, the introduction to multi-varied  
14 statistics, advanced statistics, logistic regression.

03:39:38

15 Then I took causal inference. And then I took a course on  
16 GIS.

17 **Q.** And can you explain what analytical methods go into  
18 multi-varied analysis?

19 **A.** Yes. Regression analysis, depending if you are using,  
20 you know, linear regression analysis, logistic regression,  
21 depending on the data-generation process. Depending on  
22 the variables that you are studying, you can also apply  
23 other techniques in multi-varied regression analysis like  
24 fixed effects, multilevel modeling, and so on.

03:39:57

25 **Q.** Now, how do these sorts of statistical methodologies

03:40:22

1 relate to the study of political science?

2 **A.** Well, it has to do with everything. There is two --  
3 basically, I would say, political science over the past  
4 two decades or so has become more and more data-oriented.  
03:40:45 5 There has been a boom in data. So we scientists have  
6 access now to a plethora of new data that allows to us  
7 more interesting research questions.

8 So methodology in this case or applied statistics are  
9 very important because that's going to allow us to have a  
03:41:06 10 better way to approach and answer questions that are our  
11 interest -- or that fall within our interest.

12 **Q.** Now, after you completed your Ph.D studies, could you  
13 walk us through your professional activities?

14 **A.** Yes. I have -- after that, after I graduated from my  
03:41:30 15 Ph.D, I went to the University of Houston. I did a  
16 visiting scholar year at the Center for Mexican American  
17 Studies.

18 And in 2008, I transitioned back to the department of  
19 political science as an assistant professor.

03:41:49 20 **Q.** And I forgot to ask. What was your dissertation topic  
21 for your Ph.D program?

22 **A.** I did three papers. It was not a dissertation. Now  
23 we do three papers, models. One paper was on immigration.  
24 The other one was on applied methodology, something called  
03:42:08 25 Bayesian additive regression trees. And then the other

1 paper was on public opinion towards immigration.

2 **Q.** Now, after you were -- how long were you an assistant  
3 professor?

4 **A.** Our probatory period is for seven years. So it was  
5 six years, and in the sixth year you go up for tenure.

6 **Q.** What year was that?

7 **A.** I went for tenure in 2014, I believe.

8 **Q.** And did you obtain tenure?

9 **A.** Yes, I did.

10 **Q.** And what is your title today?

11 **A.** I am an associate professor.

12 **Q.** Do you have any leadership positions at the  
13 university?

14 **A.** I am the associate director at the Center for Mexican  
15 American Studies, and before that I was the president of  
16 the faculty center.

17 **Q.** And how long were you the president of the faculty  
18 center?

19 **A.** Eighteen months.

20 **Q.** Can you explain what the Center for Mexican -- was it  
21 Mexican American and Latino Studies?

22 **A.** Yes.

23 **Q.** What does that center do?

24 **A.** Well, the center has three big areas. One is the  
25 academic achievement program; and with the academic

1 achievement program we mentor, take and, I guess, figure  
2 out how to graduate kids that enter the university with a  
3 lower GPA. Most of the times these are first-generation  
4 college students. We take students from -- it's a  
5 means-tested program. They have to have some need in  
6 order to apply for the program.

7 We provide a \$3,000 annual scholarship for the four  
8 years they are in college. We provide mentorship. We  
9 provide leadership courses. We invite them to do  
10 community work -- that's part of the scholarship --  
11 community work, service to the community. And, also, they  
12 have to comply with weekly study hall hours and, also,  
13 one-to-one mentoring sessions.

14 On the other hand, we have the research part of the  
15 center. The research part focuses on creating a number of  
16 reports and briefs that are published in the -- in the  
17 center's website.

18 And the third part is the academic side. We have a  
19 minor in Mexican American studies, and we have been  
20 working on creating an applied minor in Mexican American  
21 and Latino studies that is going to have -- provide  
22 students with tools that the labor market needs.

23 For example, tools are going to be addressed towards  
24 the business community, the policy community. For  
25 example, one of the minors that -- or the concentration

1 tracks of the major is an applied minor in quantitative  
2 methods. The other one is in conjunction with the  
3 business school on business administration. And we have  
4 one in general that is just liberal arts.

03:45:31

5 **Q.** Do you teach both the undergraduate and the graduate  
6 level?

7 **A.** I do.

03:45:44

8 **Q.** Let's start with the undergraduate courses. What  
9 undergraduate courses do you teach? And if it changes,  
10 you need to let me know.

03:46:14

11 **A.** Yes. So I taught Intro to American Politics, Intro to  
12 Texas Politics, Intro to Public Policy, Latino Policy,  
13 Race -- Race, Ethnic and Gender Politics. And I have  
14 taught, also, Research Design. And I think that's the --  
15 yeah. I cannot recall if I taught any other classes or  
16 not, but that's it.

17 And on the graduate side, I have taught Political  
18 Psychology. I have taught a seminar on causal inference,  
19 a seminar on immigration policy.

03:46:32

20 **Q.** How long have you been teaching Intro to Texas  
21 Politics?

22 **A.** I think probably six or seven years.

23 **Q.** And what course -- or, excuse me, what topics do you  
24 cover in that course?

03:46:52

25 **A.** Well, in the Texas Politics, all students that go to a

1 public institution in the state of Texas have to take  
2 these two courses: Intro to American Government and Intro  
3 to Texas Politics.

03:47:10

4 And the Texas Politics is just introduction to Texas  
5 government particularly. So we go through the executive  
6 branch, the legislative branch, including some legislative  
7 processes and, obviously, the judicial branch.

8 **Q.** Do you cover redistricting in any of the courses that  
9 you teach?

03:47:32

10 **A.** Yes. In the American Politics course and Texas  
11 Politics I have covered redistricting when we talk about  
12 the judiciary.

13 **Q.** And give the Court a sense of what that lesson looks  
14 like.

03:47:45

15 **A.** Okay. So we, basically, study a little bit about  
16 Public Law 74. We have -- we compare different  
17 redistricting systems across the country -- for example,  
18 comparatively, like the independent commissions that  
19 exist, for example, in California versus the legislative  
20 processes that happen in Texas and other states.

03:48:07

21 We cover a little bit of the VRA, what those entail,  
22 the language prohibitions of 1975; and we also make  
23 comparisons about, you know, how different processes can  
24 have different outcomes.

03:48:30

25 **Q.** Do you keep yourself informed about Texas politics to

1 prepare yourself to teach that course?

2 **A.** Yes. Yes. 100 percent. I also have a weekly podcast  
3 on Houston Public Media, and the podcast is about -- is  
4 divided in two parts. One is general national politics  
03:48:56 5 and the rest -- the podcast is 30 minutes. I would say  
6 ten minutes is about national politics, one or two topics;  
7 and the rest is a discussion of what is going on in Texas  
8 politics.

9 **Q.** In your class that you teach redistricting topics,  
03:49:18 10 does that involve looking at redistricting maps and  
11 comparing them to one another?

12 **A.** Yes. We look at maps, and the purpose of looking at  
13 maps is to change how -- depending on the process, you are  
14 going to get different maps. So we compare maps.

03:49:34 15 We illustrate how some maps are gerrymandering. Of  
16 course, we go through the history of gerrymandering back  
17 in the 1800s in Boston how those maps -- and how it came  
18 to be named or named as gerrymandering.

19 So we go through that -- through that in the  
03:49:55 20 redistricting.

21 **Q.** In your academic work do you have the occasion to  
22 analyze election data?

23 **A.** Yes.

24 **Q.** And can you talk a little bit about that?

03:50:04 25 **A.** Yes. So in my most recent published work, we have

1 used data from the Texas Legislative Council to analyze  
2 elections and to analyze, for example, changes in  
3 electoral administration rulings or rules, in particular  
4 how transitioning from precinct-level voting to vote  
5 centers increases or decreases turnout in particular  
6 counties.

7 We also -- I also use electoral data from the Texas  
8 Legislative Council any time that I give presentations  
9 either before or after the elections. And these  
10 presentations are to members of the community that invite  
11 me to speak to different places, like the League of Women  
12 Voters or any other professional association that wants to  
13 get a sense of what is going on.

14 **Q.** And have you been invited by members of both major  
15 parties in Texas to speak at events?

16 **A.** Yes.

17 **Q.** How frequently do you work with data from the --  
18 election data from the Texas Legislative Council?

19 **A.** Well, I would say pretty frequently. I don't have --  
20 you know, I cannot tell you, like, every day or anything  
21 like that. There are weeks that I work extensively with  
22 it and, you know, I stop and then come back. So -- but I  
23 would say that is pretty regular.

24 **Q.** Can you talk a little bit about your experience with  
25 geographic information systems and your studies, you know,

1 in your Ph.D program? We'll start with that.

2 **A.** Yes. So part of my research agenda is to try to  
3 understand how space -- and by that I mean the geographic  
4 space, how the space molds political behavior. So in  
5 order to understand that, I have to use geographic  
6 information systems in order to be able to geocode data  
7 and to see, for example, where voters live and what are  
8 the characteristics of the place in which they reside.

9 We have used that data, for example, to estimate  
10 driving distance between a voter's place of residence to  
11 the closest precinct-level voting booth or to the closest  
12 vote center and have tried to estimate if driving distance  
13 increases or decreases turnout.

14 So if you are a voter and you have, for example, your  
15 precinct-level place where you used to vote, you know, one  
16 block away, well, voting may be easier for that particular  
17 voter.

18 In 2005, when the State legislator -- legislature  
19 enacted a law that allowed counties to transition to vote  
20 centers and not use precinct-level voting anymore, we --  
21 counties can now or have the opportunity to locate vote  
22 centers across the county in different places.

23 So we estimate the driving distance from that place of  
24 residence of a voter to a vote center and compare that  
25 with the driving or the difference of the actual distance

1 between the precinct level and the vote center and try to  
2 use that as an independent variable to predict turnout.

3 **Q.** How frequently in your academic work do you work with  
4 GIS methods like you've described just now?

03:53:46

5 **A.** Very often because, you know, creating a paper,  
6 writing a paper it's -- you know, it's months. So  
7 working, for example, with data that we got from the  
8 Secretary of State that was perhaps, I would say, a year  
9 or more of -- these are big -- very big files.

03:54:13

10 So cleaning the data and understanding the data and  
11 saving the data in GIS, it's a process that takes years.  
12 So very often. Very often.

13 **Q.** Dr. Cortina, I'm going to have you open Plaintiffs'  
14 Exhibit Number 45, and it -- we'll pull it up on the  
15 screen so you'll be able to see it; but the screen can be  
16 a bit fuzzy, so you may want to look -- yeah. It would be  
17 -- I think it would be in the Volume 1 binder. So if you  
18 have that one there, I'll let you open up to that.

03:54:28

19 And then I'm going to ask you to turn -- I want to get  
20 to your CV.

03:55:08

21 **A.** It's empty.

22 JUDGE GUADERRAMA: Mr. Gaber.

23 THE WITNESS: It's empty.

24 MR. GABER: Oh, it's empty?

03:55:15

25 THE WITNESS: Yes. There is nothing here.

1 JUDGE BROWN: So is mine.

2 MR. GABER: I apologize. Well, we will get the  
3 Court Exhibit 45. And for the moment, Dr. Cortina, I'll  
4 ask if you could look at the screen, if you wouldn't mind.  
03:55:28 5 If we have a paper copy, we'll give it to you.

6 JUDGE GUADERRAMA: Mr. Gaber, we are right at  
7 that point where we should be taking our afternoon break.  
8 Why don't we do that, and you can get your copies together  
9 for us.

03:55:39 10 MR. GABER: Yes.

11 JUDGE GUADERRAMA: All right. We will take a  
12 break for 15 minutes. If we could all be back at 4:10,  
13 and we will resume our proceedings at 4:10.

14 (Recess from 3:55 p.m. to 4:10 p.m.)

04:10:27 15 JUDGE GUADERRAMA: Be seated, please.

16 All right. Mr. Gaber, did you get us our copies, as  
17 well?

18 MR. GABER: Thank you to the Court's generous  
19 staff. We have printed copies. We will bring color  
04:10:39 20 versions that are hole-punched and replace them in your  
21 binders. But for now there should be copies up there for  
22 the Court, and the witness has a copy as well.

23 JUDGE GUADERRAMA: Thank you.

24 BY MR. GABER:

04:10:50 25 Q. So, Dr. Cortina, if you could turn to the third page

1 of Exhibit 4 [sic]. Do you see the first two pages are a  
2 declaration attaching your report and your CV? Do you see  
3 that?

4 **A.** Yes, sir.

04:11:02 5 **Q.** And the CV starts on Page 3; is that right?

6 **A.** That is correct.

7 JUDGE SMITH: Mr. Gaber, you said Exhibit 4.  
8 It's 45, isn't it?

9 MR. GABER: Oh, I am sorry, Your Honor. Yes.  
04:11:14 10 Exhibit 45.

11 JUDGE SMITH: The court reporter said 4.

12 MR. GABER: I appreciate it.

13 BY MR. GABER:

14 **Q.** Dr. Cortina, did you prepare your CV?

04:11:21 15 **A.** Yes.

16 **Q.** And where it describes your education, is that  
17 information accurate?

18 **A.** Yes.

19 **Q.** Now, the CV that you provided, that appears to me to  
04:11:40 20 be eight pages long; is that correct?

21 **A.** That is correct.

22 **Q.** And not going through everything, but on Page 2 of  
23 your CV, could you describe what this page shows?

24 **A.** It shows my peer-reviewed publications, books, and  
04:12:07 25 peer-reviewed journal articles.

1 Q. How many peer-reviewed journal articles have you  
2 published?

3 A. I believe 11.

04:12:23

4 Q. Is it the case that I believe one was actually  
5 accepted for publication this weekend; is that right?

6 A. Yes. Yes. That's the first one, "The Quiet  
7 Revolution."

04:12:39

8 Q. And could you tell the Court a little bit about one or  
9 two of these publications, the peer-reviewed publications  
10 that bear on election analysis and some of the work that  
11 you did in your report for this case?

04:13:00

12 A. Right. The "2009 Vote Centers and Turnout By Election  
13 Type in Texas," that's the paper that I alluded to before;  
14 and it's a paper in which we ask if voting turnout when  
15 transitioning from vote centers, before and after. This  
16 is county-level data. The data comes from the Texas  
17 Legislative Council.

04:13:19

18 And what we investigate is if turnout changes due to,  
19 on the one hand, the type of election under  
20 investigation -- under analysis and whether vote center  
21 turnout was higher or lower after a county transitioned  
22 from precinct-level voting to vote centers.

04:13:39

23 Q. And then can you explain a little bit about the rigor  
24 involved in getting the works that you have had published,  
25 peer-reviewed works you have had published accepted by

1 journals?

2 **A.** Yes. So once you finish the article, you send it to  
3 an editor. The editor, his or her job is to do a desk  
4 review. In the desk review process, the editor merits if  
5 the article is good enough to be sent out for review.

04:13:56

6 The peer-reviewed process in the journals I publish is  
7 at least three peer reviewers. These three peer reviewers  
8 have to analyze your paper to see if the data that you are  
9 using is correct, if the methods that you are applying is  
10 correct -- are correct, and if the research question that  
11 you are posing is of interest enough for the discipline.

04:14:17

12 If the reviewers agree that it is a good article, they  
13 will have three choices. Those three choices are either  
14 accept as it is. In very rare situations that happens.

04:14:41

15 Accept and resubmit, that means they raised a number  
16 of questions that need to be addressed before it's  
17 published.

18 And the last one, if they don't think it's a good  
19 article, they reject it.

04:15:11

20 **Q.** And I see you have several or a few books that you  
21 have authored. Can you talk a bit about those?

22 **A.** Yes. For -- in the -- we have -- well, I have an  
23 edited volume that is on the new perspectives on  
24 international migration and development. And it's

04:15:31

25 basically a collection of papers and different authors

1 that talk about how migration can help development in home  
2 countries.

3 The other book that I have is an edited volume.

4 Again, it's a quantitative tour of the social sciences.

04:15:50

5 And what I did in that with my co-editor in that book was  
6 gather a number of essays from different academics and  
7 explain in, I would say, non-academic language how  
8 quantitative sciences are used in social science to answer  
9 questions.

04:16:09

10 In that book I have a chapter on how you use  
11 propensity score matching -- that is a technique -- in  
12 order to try to, once again, mimic randomized assignment;  
13 and I explain how it, you know, can be implemented in  
14 social sciences.

04:16:29

15 And then the last book that we have is a book that we  
16 did on *Red State, Blue State, Rich State, Poor State: Why*  
17 *Americans Vote the Way They Do*. And in that book, myself  
18 and my co-authors, or my co-authors and myself, we  
19 investigated different elections at the national level and  
20 why we observed different patterns.

04:16:53

21 For example, in some cases when you look at election  
22 data in some states, you see an opposite party; and when  
23 you look, for example, at their relationship between  
24 income and voting for the Republican candidate, in some  
25 cases that relationship is positive and in some cases that

04:17:11

1 relationship is negative.

2 Geography has to do with a lot of that. In that book  
3 we apply a series of statistical methods called multilevel  
4 regression and multilevel regression allows you to compare  
04:17:31 5 not only within groups -- let's say, states or counties  
6 within states -- but also between counties by allowing the  
7 slopes and the intercepts to vary freely.

8 In normal regression you are fixing those intercepts  
9 because you are mimicking or you are trying to obtain the  
04:17:52 10 line between the datapoints. And in these ones you allow  
11 the data to speak for itself, to put it in colloquial  
12 terms.

13 **Q.** And is there -- across all of these different types of  
14 statistical and political science methodologies you've  
04:18:09 15 discussed, is there sort of a standard process, a  
16 scientific process that is followed in working with data?

17 **A.** Yes. Absolutely. So the first one is you follow the  
18 scientific method. And the scientific method is you have  
19 a research question, and that research question is you are  
04:18:27 20 trying to come up with a theory. You can observe a  
21 pattern, and you are trying to explain that pattern.

22 So either you gather data to explain that pattern  
23 through survey research or any other data-gathering  
24 process, or you can use observational data. For example,  
04:18:51 25 a survey that asks a number of questions, and you use that

1 survey in order to try to answer the question that you are  
2 using.

04:19:12

3 You develop a few hypotheses and the hypotheses then  
4 are tested with such data. And after that, you either  
5 reject or accept the hypotheses given the data that you  
6 have and the methods that you have applied.

04:19:31

7 The data-generation process is very important in terms  
8 of how your outcome variable or dependent variable is  
9 going to be, the nature of the variable itself, whether it  
10 is an ordinal variable, whether it's a dichotomous  
11 variable. Then you have to choose -- pardon me. You have  
12 to choose the right method in order to investigate that  
13 relationship.

04:19:51

14 **Q.** I'll let you get some water.

15 **A.** Oh, thank you.

16 **Q.** Now, Dr. Cortina, what would you characterize as your  
17 areas of expertise as applied to the work that you have  
18 been asked to do in this case?

04:20:09

19 **A.** So I would say that it is political behavior, election  
20 analysis, statistics probably defined.

21 **Q.** Is it political behavior, election analysis, and  
22 statistics?

23 **A.** Uh-huh. Yes, sir.

24 **Q.** And have you testified in court before?

04:20:23

25 **A.** No. This is my first time.

1 Q. Now, today I'm going to ask you a series of questions.  
2 In asking you that, I would ask you to apply your  
3 knowledge, experience and qualifications on those topics.  
4 Does that work for you?

04:20:37

5 A. Yes, sir.

6 MR. GABER: And, Your Honors, at this time I  
7 would tender the witness, Dr. Cortina, as an expert in  
8 political behavior, election analysis, and statistics.

9 JUDGE GUADERRAMA: Who is the State's attorney?

04:20:49

10 MR. THOMPSON: Defendants are not raising a  
11 *Daubert* objection for purposes of this hearing.

12 JUDGE GUADERRAMA: All right. So the Court will  
13 recognize Dr. Cortina as an expert in those areas:  
14 political behavior, election analysis, and statistics.

04:21:05

15 MR. GABER: Thank you, Your Honor.

16 BY MR. GABER:

17 Q. Okay, Dr. Cortina. After that long discussion of your  
18 background -- and I appreciate that -- I would like to  
19 move on to your work in this case.

04:21:16

20 How did you get involved in this case?

21 A. I got a call from Mr. Dunn on December 31st asking me  
22 if I would like to be an expert witness on this matter.

23 Q. And what were you retained to analyze?

24 A. I was asked to do three things primarily.

04:21:36

25 One was to compare the election results of the

1 reconstituted maps of the Enacted Plan 2168. This was  
2 Plan Number 4, the plaintiffs' alternative plan.

04:22:03

3 I used the 2018 and 2020 elections for that matter and  
4 see what would be the prospects of the two major political  
5 parties under those two maps.

6 **Q.** And what was the second item that you did?

04:22:25

7 **A.** The second item was to analyze and compare different  
8 enacted plans as they pertain and relate to Tarrant County  
9 and to the City of Fort Worth. And I compared Senate  
10 District 10, the benchmark plan, the Enacted Plan 2168. I  
11 also compared Congressional District 33 and school board  
12 of elections and -- I'm sorry -- School Board of Education  
13 and House district maps.

04:22:50

14 And the third thing that I was asked to do was to  
15 compare core retention population plans between Plan 2168  
16 versus the Benchmark Plan 2100, Plan 4 versus the  
17 Benchmark Plan 2100; and Plan 4 versus the Enacted Plan  
18 2168.

04:23:18

19 **Q.** And we'll start with the first area of analysis, the  
20 election analysis; and I will find the page number where  
21 we begin in your report. So this is Plaintiffs' Exhibit  
22 Number 45, and it is beginning on Page 3 of Dr. Cortina's  
23 report.

04:23:44

24 Do you see that first page, Dr. Cortina? I'm sorry.  
25 The third page.

1 **A.** Yes.

2 **Q.** Now, I think you mentioned that you used the 2018 and  
3 the 2020 statewide election results to conduct your  
4 analysis. Do I have that right?

04:23:58 5 **A.** You have that right.

6 **Q.** And what was the source of that data?

7 **A.** That was the Texas Legislative Council.

8 **Q.** I know that you mentioned that earlier that you have  
9 worked with TLC data. Do you generally find it to be  
04:24:11 10 reliable?

11 **A.** Absolutely.

12 **Q.** And is it regularly relied upon by other social  
13 scientists?

14 **A.** One hundred percent.

04:24:19 15 **Q.** Now -- and just to back up a bit -- is it your  
16 understanding that Plan S-2168, that's the enacted plan  
17 that passed for the State Senate and Senate Bill 4. Is  
18 that your understanding?

19 **A.** Yes.

04:24:32 20 **Q.** And this alternative plan, Plan 4, is it your  
21 understanding that that is an alternative configuration  
22 that looks to what could alternatively have happened if  
23 partisan intent were the goal of the Senate?

24 **A.** Correct.

04:24:47 25 **Q.** Now, I think you mentioned that you did a

1 reconstituted election result analysis on the two plans.

2 Can you explain what "reconstituted election results" are?

3 **A.** Yeah. So given that these plans were just one enacted  
4 by the state legislature and the other one is an  
04:25:09 5 alternative, no elections have happened in those plans.

6 So what TLC, the Texas Legislative Council, does is it  
7 transforms, given the new geographies and the new  
8 boundaries of such districts, it conforms the electoral  
9 results of past elections and races in those elections and  
04:25:35 10 puts them into the new -- into both plans, into 2168 and  
11 Plan 4.

12 So it's reconstituted because the election has not  
13 happened *per se*. It's just an exercise to see how well a  
14 political party would perform under one plan or the other  
04:25:56 15 plan.

16 **Q.** And is it necessary to do this type of reconstituted  
17 election analysis using only statewide election --  
18 statewide races in an election?

19 **A.** Given that you have new districts, it's important to  
04:26:12 20 be able to compare races that have been across the state.  
21 So, in my opinion, the right way to do it is to analyze  
22 all statewide elections in order to be able to compare,  
23 luckily, apples with apples in the new boundaries created  
24 by such maps.

04:26:34 25 **Q.** And would you be able to look at individual prior

1 state Senate races in new state Senate districts where the  
2 lines didn't match up?

04:26:54

3 **A.** The problem with that is that if you attempt to do  
4 that, it's a completely different election. If you only  
5 look at Senate district races, the boundaries are going to  
6 be different. The context may have different  
7 implications, and the elections are going to be different.

04:27:14

8 If you use statewide elections in this case, the  
9 importance is that you are going to be consistent across  
10 your comparisons regardless of one -- regardless of the  
11 new districts.

04:27:33

12 So what I'm trying to say is that you are going to be  
13 able to compare all the elections and how well a political  
14 party performs under the new maps across all these  
15 different races.

04:27:54

16 And, also, statewide races, as you know, in Texas we  
17 have a very long ballot every single election cycle. And  
18 statewide races provide a good test to see elections that  
19 are going to be with very high turnout and elections that  
20 may not have a significant turnout in some cases because  
21 they are at the bottom of the ballot.

04:28:13

22 **Q.** And just to close the loop on the statewide versus  
23 state Senate races, a new state Senate district might have  
24 covered two different or more than two different state  
25 Senate districts in the previous plan; is that correct?

1 **A.** Yes.

2 **Q.** In your view, did the 2018 and 2020 elections provide  
3 an accurate assessment of the current state of Texas  
4 politics?

04:28:26 5 **A.** Yes.

6 **Q.** Do you see any value to your analysis in reviewing  
7 older election results?

8 **A.** No. And the reason for that is that previous  
9 elections are not going -- given that the task at hand was  
04:28:45 10 to see how well Republican candidates would fare between  
11 2168 and Plan 4, the two elections that you are referring,  
12 2018 and 2020, constitute the elections in which party  
13 competition has increased significantly in comparison to  
14 other years.

04:29:10 15 So if you want to make that comparison, you have to  
16 use the elections in which it constitutes a good, as the  
17 bankers say, stress test for both maps. So if you use  
18 other elections before or primary elections, that is just  
19 going to give you numbers that are not going to be  
04:29:33 20 reliable and that are not going to represent the current  
21 political reality of the state.

22 **Q.** And you mentioned the current political reality.  
23 Would using older election results also give you a  
24 snapshot of the past rather than the current state of  
04:29:46 25 affairs?

1 **A.** That is correct.

2 **Q.** Dr. Cortina, what methodology did you use to compare  
3 the electoral performance for Republicans in the two maps  
4 that you analyzed?

04:29:57

5 **A.** Correct. So given that we are using these  
6 reconstituted elections and we are using statewide  
7 elections and we have these new geographic boundaries of  
8 these new districts, I use the margin of victory.

04:30:17

9 The margin of victory is a percentage difference of  
10 the first-place percentage votes minus the percentage  
11 votes of the second place.

12 **Q.** And was that analysis done on a district-by-district  
13 basis or on a sort of plan-wide basis?

14 **A.** It was done on a district-by-district basis.

04:30:35

15 **Q.** And why prefer or why did you prefer a  
16 district-by-district basis?

17 **A.** Because electoral competition happens in districts.  
18 And electoral competition is geographically bounded,  
19 right. We vote in a district. We are represented by a  
20 particular House district. So -- pardon me. So  
21 everything is geographically bounded.

04:30:53

22 So district by district represents the reality of what  
23 it is. And especially when you are estimating average  
24 race, that would have implications; and it can be  
25 misleading by showing the margin of victory at the state

04:31:19

1 level because it's not going to give you the whole  
2 picture.

04:31:36

3 And I think that given that I was asked to compare  
4 these results at the -- and compare how both political  
5 parties would fare in one map or the other, my  
6 responsibility was to show the whole picture; and the  
7 whole picture is district by district.

8 **Q.** If you need to take another drink.

9 **A.** Thank you.

04:31:49

10 **Q.** Now, you mentioned the average in your response there.  
11 Did you analyze the average margin of victory for  
12 Republicans?

13 **A.** Yes, I did.

04:32:10

14 **Q.** And I think you just mentioned that you did the margin  
15 of victory within the district; is that right?

16 **A.** Right. Yeah. The district level.

17 **Q.** That was my fault. The question was: Did you analyze  
18 the statewide average margin of victory for Republicans?

19 **A.** Yes. I provided it as a contextual variable, yes --

04:32:25

20 **Q.** And did --

21 **A.** -- for particular races.

22 **Q.** For particular races within a particular district?

23 **A.** Exactly.

04:32:37

24 **Q.** Okay. And is it possible you could -- if one were to  
25 use the average margin of victory on a plan-wide basis for

1 the Republican candidates in a particular race, is it  
2 possible that as the average margin of victory increases,  
3 the chance of the Republican candidates winning more  
4 districts might decrease?

04:32:56

5 **A.** It is possible. And this has to do with the -- with  
6 the average, with the mean in this case.

04:33:19

7 Just to give you an example, you can have, you know, a  
8 margin of victory of, I don't know, let's say 50 in this  
9 hypothetical, right. But that could be driven by a couple  
10 of outliers in the data distribution.

11 In comparison, you can have a margin of victory of 20  
12 or something else; but the data distribution tends to be  
13 smoother.

04:33:37

14 So the mean is going to be very sensitive to outliers.  
15 And given that you have new boundaries drawn in one map or  
16 the other, you can have some sort of a misleading result  
17 at the end; and I would not feel comfortable saying that  
18 this is a good margin of victory if you don't look down at  
19 the district level.

04:33:57

20 **Q.** And in terms of redistricting, is it also possible  
21 that the higher the margin of victory for one party, it  
22 might mean that their voters are being more inefficiently  
23 placed in fewer districts?

24 **A.** That is correct.

04:34:12

25 **Q.** What threshold of the margin of victory in a

1 district-by-district basis did you select for assessing  
2 Republican Party performance in the two plans that you  
3 analyzed?

04:34:29

4 **A.** So for both plans I used the threshold is the margin  
5 of victory is more than ten percent.

6 **Q.** And how did you come to that margin?

7 **A.** It's just the difference between the percent vote of  
8 the first place minus the percent vote of the second  
9 place.

04:34:45

10 **Q.** I meant to ask "why."

11 **A.** Oh, I'm sorry. I heard "how."

12 **Q.** That's my fault.

04:34:59

13 **A.** Why? Because, once again, we are comparing elections  
14 that have not happened, on the one hand, in districts that  
15 have not happened or had an election so far.

16 And we are comparing different elections. We are  
17 comparing, for example, the presidential election versus  
18 the Criminal Court of Appeals election. The two elections  
19 are completely different.

04:35:17

20 So in order to understand what 10 percent margin of  
21 victory means, that allows you to have these comparisons.  
22 So a margin of victory of 10 percent in one election or  
23 the other means the same. It means that the candidate  
24 that got that winning by 10 percent or more, he or she is  
25 in a district that could be considered safe for that

04:35:38

1 particular candidate, in my opinion.

2 **Q.** So, in your view, that 10 percent threshold is sort of  
3 where the seat moves from being possibly competitive to  
4 more likely to be secured for that party in a given  
5 district; is that correct?

04:35:59

6 MR. THOMPSON: Objection. Leading.

7 JUDGE GUADERRAMA: Sustained.

8 THE WITNESS: I say --

9 MR. GABER: I'll rephrase the question.

04:36:06

10 JUDGE GUADERRAMA: Sustained.

11 THE WITNESS: Sorry.

12 BY MR. GABER:

13 **Q.** Is the -- the 10 percent level, what is the  
14 significance of that in terms of whether the district is  
15 competitive or not?

04:36:16

16 **A.** Well, the significance is that about 10 percent or  
17 greater than 10 percent is very difficult for a candidate  
18 -- or it's considered or what is considered here is that  
19 that district cannot be considered as competitive.

04:36:37

20 "Competitive" means that a candidate, whether from one  
21 party or the other party, has a chance to win a particular  
22 race on their particular election.

23 Having the margin of victory greater than 10 percent  
24 implies that that candidate won that particular election

04:36:57

25 very comfortably.

1 Q. And just to put it as an example, is there a statewide  
2 election, say from 2018, where the candidate won by  
3 greater than 10 percent that you would view -- if  
4 statewide won by greater than 10 percent that would seem  
5 to be indicative of a secure election?

04:37:15

6 A. Yes. For example, if you look at the -- for the  
7 governor's race, Governor Abbott won re-election with a  
8 statewide margin of victory of 13.3 percent versus the  
9 Democratic candidate. And no one questioned the margin of  
10 victory of Governor Abbott and how overwhelmingly he won  
11 re-election back in 2018.

04:37:37

12 Q. Okay. I would like to turn to your election analysis  
13 of the two plans and start with the 2018 election. And  
14 this analysis is on Page 3 of your report.

04:38:04

15 Can you tell the Court what the range from the low to  
16 high of the statewide margin of victory was for the  
17 Republican candidates in the races that you analyzed?

18 A. Yes. So in the case of the statewide election,  
19 Senator Cruz won re-election with a 2.6 statewide margin  
20 of victory; while Governor Abbott won his re-election with  
21 13.3 percent over the Democratic candidate.

04:38:28

22 Q. Do you know how many elections from 2018 did you  
23 analyze?

24 A. I believe I analyzed 14 races.

04:38:49

25 Q. Now, in Plan S-2168, so the enacted plan, for the 2018

1 statewide elections, did the number of Senate districts in  
2 which Republican candidates received a 10 percent margin  
3 of victory or greater change across the races that you  
4 analyzed on that ballot?

04:39:09

5 **A.** No. It was 19 central districts.

6 **Q.** Was that the case in each of those races?

7 **A.** Yes.

8 **Q.** Under Plan S-2168 did the Republican candidates win  
9 any districts by less than a ten percent margin of

04:39:26

10 victory?

11 **A.** No.

12 **Q.** So the 19 seats, that was just it? That was the total  
13 number in each of the races?

14 **A.** Yes.

04:39:38

15 **Q.** In the 2018 election for Plan S-2168, what is the  
16 lowest statewide margin of victory -- I'm sorry. Strike  
17 that.

18 What was the lowest statewide margin of victory for

19 Senator Cruz in any of the districts that he carried? I

04:39:58

20 said "statewide" again. I'll strike that again and try it  
21 the third time.

22 Dr. Cortina, what was the lowest district margin of  
23 victory for Senator Cruz in one of the districts he  
24 carried under Plan S-2168?

04:40:16

25 **A.** It was 12 percent.

1 **Q.** Now I would like to move -- and I apologize. I am  
2 going to take it out of sequence. I would like to move to  
3 Page 4 of your report, and we'll skip for now the 2020  
4 election analysis under Plan S-2168 and come back to that.

04:40:31

5 I'll ask you to take a look now at the 2018 election  
6 under plaintiffs' Alternative Plan 4.

04:40:49

7 So we're looking at the same statewide elections,  
8 right? So it's the 2.6 percent statewide margin of  
9 victory for Cruz to 13.3 percent for Abbott, that remains  
10 the same; is that right?

11 **A.** Yes. Yes, sir.

04:41:12

12 **Q.** And under plaintiffs' Alternative Plan 4 is there any  
13 change in the number of districts where the Republican  
14 candidate wins by a margin of victory of greater than  
15 10 percent?

16 **A.** No. It's still the same number: 19.

04:41:30

17 **Q.** Nineteen. In Alternative Plan 4, under the 2018  
18 elections, are there any districts in which the Republican  
19 candidates win by a margin of less than 10 percent?

20 **A.** There are some races, in particular in Senate District  
21 10, where Republicans won certain of those races. The  
22 Republicans won -- for example, Governor Abbott won by a 4  
23 percent margin of victory in the plaintiffs' Plan 4 SD-10  
24 plan; also the comptroller's race and the land  
25 commissioner's race and the railroad commissioner's race

04:41:59

1 in which the Republican candidate prevailed in Senate  
2 District 10.

04:42:16

3 **Q.** So under plaintiffs' Alternative Plan 4, then, is it  
4 the case that there are in four of the 14 elections --  
5 four of the 14 races from the 2018 election the Republican  
6 candidates carried 20 seats?

7 **A.** That is correct.

8 **Q.** And then for Senator Cruz's race was it just 19 seats?

9 **A.** Yes.

04:42:35

10 **Q.** And then for Governor Abbott's was it 20?

11 **A.** Twenty.

04:42:52

12 **Q.** And does that reflect -- along the spectrum of the  
13 statewide margin of victory from 2.6 to 13.3, does that  
14 reflect some additional growth possibility under  
15 plaintiffs' Alternative Plan 4 for Republican candidates?

16 **A.** What it reflects is just that there exists possibility  
17 for growth for Republicans to perform better in this 20th  
18 district, whereas in Plan 2168 that possibility does not  
19 exist.

04:43:19

20 **Q.** Turning to the 2020 elections under Plan S-2168 -- and  
21 that, I believe, is the paragraph above where you are  
22 right now -- and, first of all, what was the statewide  
23 margin of victory range for candidates on the 2020  
24 election for Republican candidates?

04:43:42

25 **A.** So for President Trump, he won the 2020 presidential

1 race with a margin of victory of 5.5 percent and also in  
2 the 19 senatorial districts. And for the Senate race,  
3 Senator Cornyn won the state with a margin of victory of  
4 9.6 percent.

04:44:07

5 **Q.** And how many races -- how many statewide races did you  
6 analyze for the 2020 election?

7 **A.** I believe it was nine elections.

8 **Q.** And how many total, then, for 2018 plus 2020?

04:44:24

9 **A.** Twenty-four elections. However, one of the elections  
10 I believe in 2018, if I'm not mistaken, the Criminal Court  
11 of Appeals, Position 8, there was no Democrat running. It  
12 was a Republican versus a Libertarian.

13 **Q.** So 23 races in which there were two-party competitions  
14 for the major parties?

04:44:47

15 **A.** That's correct.

16 **Q.** So in the 2020 election under Plan S-2168, how many  
17 districts do Republican candidates prevail by a margin of  
18 victory of 10 percent or greater?

19 **A.** Nineteen.

04:44:58

20 **Q.** And are there any in Plan S-2168 where Republican  
21 candidates prevailed by a margin of victory of less than  
22 10 percent?

23 **A.** No.

04:45:16

24 **Q.** And then turning, if you would, to Page 5, the 2020  
25 election under plaintiffs' Alternative Plan 4, again, we

1 have the same -- it's the same election. So we have the  
2 same statewide range of margin of victory; is that right?

3 **A.** That is correct.

04:45:33

4 **Q.** And in plaintiffs' Alternative Plan 4 for the 2020  
5 elections, in how many districts did the Republican  
6 candidate win by a margin of victory of 10 percent or  
7 greater?

8 **A.** Nineteen.

04:45:44

9 **Q.** And are there any in which the Republican candidate  
10 won by a margin of victory of less than 10 percent?

11 **A.** No.

12 **Q.** So across both the 2018 and 2020 elections is it the  
13 case -- or I'll ask: In how many races under plaintiffs'  
14 Alternative Plan 4 was there a Republican candidate  
15 winning the 20th seat?

04:46:01

16 **A.** In a lot of the races in Senate District 27, in most  
17 races, and there were also -- no. Sorry.

18 **Q.** That was the Democratic candidate, right?

19 **A.** Right. That was the Democratic candidate that won  
20 those elections in 2020. That's correct.

04:46:28

21 **Q.** So the four races in 2018 for SD-10?

22 **A.** For SD-10, that is correct.

23 **Q.** And none in 2020?

24 **A.** None in 2020.

04:46:38

25 **Q.** But it's four of 23 in Alternative Plan 4 that the

1 Republican candidate would have won SD-10?

2 **A.** Yes.

3 **Q.** And it was zero in Plan S-2168?

4 **A.** That is correct.

04:46:57

5 **Q.** In turning back to the 2018 U.S. Senate race under  
6 plaintiffs' Alternative Plan 4, what was Senator Cruz's  
7 lowest margin of victory in one of the districts that he  
8 carried?

9 **A.** 12.7.

04:47:19

10 **Q.** And it was 12 percent in Plan S-2168? Is that --

11 **A.** That is correct.

12 **Q.** Dr. Cortina, what was your overall opinion, based on  
13 your background and experience and education, in comparing  
14 the election results for these two statewide elections of  
15 Plan S-2168 versus plaintiffs' Alternative Plan 4?

04:47:43

16 **A.** Yes. When you compare both plans, you can conclude  
17 that -- or I concluded that Plan 4 under the plaintiffs'  
18 alternative plan performs equal or better than Plan 2168.

19 And the reason for that is that both those plans carry  
20 19 districts in which the Republican candidate wins with a  
21 margin of victory of 10 percent or greater.

04:48:07

22 However, in Plan 4 the Republican candidate has a  
23 chance, a possibility of winning an extra district, a 20th  
24 district, in particular statewide races: the governor's  
25 race, the comptroller's race, land commissioner and

04:48:30

1 railroad commissioner.

2 **Q.** Now, in your view does that -- well, strike that.

3 Turning to the second set of analyses that you did,  
4 comparing the treatment of Tarrant County in Plan S-2168  
04:48:56 5 versus the Congressional plan, the State Board of  
6 Education plan, and the State House plan -- and this  
7 starts on Page 6 of your report -- and at the moment, I  
8 apologize. We have the black and white copies of the maps  
9 on this report. But on the screen we can show you the

04:49:16 10 color maps.

11 What did you -- what did you undertake to do in this  
12 part of your report?

13 **A.** So in this report I was just asked to compare the --  
14 these maps amongst themselves and see if there were any  
04:49:34 15 significant differences in terms of how Tarrant County and  
16 how -- how Tarrant County and Fort Worth were treated on  
17 their different maps.

18 **Q.** What did you conclude from that analysis? Let's start  
19 with the state -- well, we see on the screen we have the  
04:49:58 20 State Senate plan, do you see, kind of in the middle  
21 section of the screen, "Senate District 10 under Plan  
22 S-2168"?

23 **A.** So, basically, what I analyzed here was that Senate  
24 District 10 under Plan 2168 cut across different counties  
04:50:18 25 that goes from, I believe, if my memory serves me well,

1 from Johnson County all the way down to Brown County and  
2 cutting across in the center of Tarrant County between --  
3 in the City of Fort Worth separating or cutting across the  
4 north and south parts of the city.

04:50:41

5 **Q.** And turning to the Congressional -- sorry. Let's do  
6 the State House next. That's the next page, Page 8.

7 What do you observe about the comparison between the  
8 treatment of Senate District 10 in Tarrant County under  
9 Plan S-2168 versus the State House plan?

04:51:03

10 **A.** All right. So when you compare the combined borders  
11 of House Districts 90, 94, 95, 96 and 97, you can see a  
12 rough outline of what would be Senate District 10 under  
13 Plan 2100.

14 **Q.** And that grouping of districts stayed constant in the  
15 new State House plan; is that fair?

04:51:29

16 **A.** I'm sorry?

17 **Q.** That grouping of State House districts that forms that  
18 outline, that rough outline of SD-10, that stayed constant  
19 in the new State House plan?

04:51:40

20 **A.** That is correct.

21 MR. THOMPSON: Objection. Leading. Objection.  
22 It misstates his testimony.

23 JUDGE GUADERRAMA: Well, he has answered it.  
24 We'll admit it and take your objection.

04:51:53

25 BY MR. GABER:

04:52:09

1 Q. And then, finally, on this section of your analysis,  
2 Dr. Cortina, on Page 9, the U.S. Congressional Districts,  
3 what was your assessment -- and that Page 10 is probably a  
4 clearer image for you. What was your assessment of how  
5 the State Senate plan treated Tarrant County and Fort  
6 Worth, in particular, versus how the Congressional plan  
7 did?

04:52:28

8 A. So when you look and compare Congressional District 33  
9 and School Board of Education District 13, you can see, as  
10 it's shown in the screen, that they keep the north and  
11 south parts of Fort Worth whole.

04:52:52

12 Q. I am told that the color versions of these exhibits  
13 will arrive momentarily. So it's just in time for us to  
14 move past the section of the report that has color.

04:53:14

15 So, Dr. Cortina, what was your ultimate conclusion  
16 when you -- with respect to comparing all of these plans  
17 for Tarrant County and Fort Worth, in particular?

18 A. My conclusion was that amongst these maps, when we  
19 looked at Congressional District 33, when we looked at the  
20 School Board of Education in District 13, they treat Fort  
21 Worth, especially the northern and the southern part, as a  
22 whole community in comparison to the Senate District Map  
23 Number 10 in 2168 that clearly cuts across Tarrant County  
24 in the middle of the City of Fort Worth.

04:53:40

25 Q. I would like to move to the third and final section of

1 your report, which is the core population retention  
2 analysis. Can you explain for the Court what "core  
3 retention" is?

4 **A.** Yes.

04:53:57

5 **Q.** And this starts, I'm sorry, on Page 11 of your report.

6 **A.** Core retention is a measurement that is used to  
7 examine or quantify the percentage of the population from  
8 an old district, how many of that population forms part of  
9 the new district.

04:54:22

10 **Q.** And which plans did you compare the core retention  
11 figures for?

12 **A.** So I compared the Plan 2168 versus the benchmark plan.  
13 I compared Plan 4 versus the Benchmark Plan 2100. And I  
14 compared Alternative Plan 4 versus Plan 2168.

04:54:49

15 **Q.** And I know there is district-by-district core  
16 retention figures. Did you also provide the mean for each  
17 of those three comparisons?

18 **A.** That is correct.

19 **Q.** And the median, as well; is that right?

04:55:02

20 **A.** That is correct.

21 **Q.** Now, for the comparison between Plan S-2168, so the  
22 enacted plan, and the Benchmark Plan S-2100, what was the  
23 mean core retention figure for that plan?

24 **A.** So when we compared 2100 versus 2168, the mean

04:55:20

25 retention of overlap population between such plans was

1 75.3 percent.

2 **Q.** What about the median?

3 **A.** The median was 78.7 percent.

4 **Q.** Okay. For plaintiffs' Alternative Plan 4, again

04:55:36

5 compared against the benchmark plan, what were those mean  
6 and median core retention figures?

7 **A.** 70.4 percent, and the median was 74.6 percent.

8 **Q.** And then, finally, in comparing plaintiffs'

9 Alternative Plan 4 with Plan S-2168, what were the mean

04:55:56

10 and median core retention figures?

11 **A.** 81 percent and 91.9 percent, respectively.

12 **Q.** Does that mean that 81 percent of the people who are  
13 in a district in Plan S-2168 are in that same district in  
14 plaintiffs' Alternative Plan 4, on average?

04:56:17

15 **A.** That is correct.

16 **Q.** And for the median district, that is the district in  
17 the middle of the distribution, that means that  
18 91.9 percent of folks who were in Plan S-2168 in a  
19 district are in that same district in plaintiffs'

04:56:32

20 Alternative Plan 4?

21 **A.** That is correct.

22 **Q.** And what was your assessment of the comparison of  
23 these population -- core retention population figures  
24 across these two plans?

04:56:42

25 **A.** Well, my conclusion was that the plaintiffs'

1 Alternative Plan 4 has a high population overlap and core  
2 retention versus Plan 2168 and comparable population  
3 overlap and core retention versus Plan 2100 versus Plan  
4 2168.

04:57:04

5 **Q.** Would you consider both 75 percent and 70 percent to  
6 be high core retention figures plan-wide? Sort of as an  
7 average plan-wide?

04:57:22

8 **A.** It's certainly one is greater than the other one; but  
9 I think that both figures are, as I said here, comparable  
10 populations.

11 **Q.** Now, do you recall receiving a response report from  
12 Dr. Alford?

13 **A.** I do.

04:57:35

14 **Q.** And did Dr. Alford have some criticisms of your  
15 analysis?

16 **A.** He did.

17 **Q.** Did he have any criticisms with respect to your  
18 conclusions regarding the electoral analysis, the first  
19 part of your report?

04:57:47

20 **A.** He did not have *per se* objections in terms of the  
21 analysis or the conclusions of my report.

22 **Q.** Did he take any issue with using the  
23 district-by-district margin of victory as the  
24 methodological approach of comparing election results?

04:58:09

25 **A.** No, he did not.

1 Q. Did he take any issue with using 10 percent as the  
2 threshold for a quote/unquote safe seat?

3 A. No, he did not.

04:58:27

4 Q. With respect to the -- he didn't take any issue with  
5 your actual reporting of the election results, did he?

6 A. No.

7 Q. With respect to the second topic, the comparison of  
8 the plans in Tarrant County, how would you characterize  
9 his criticisms?

04:58:37

10 A. Well, his criticisms entailed that such plans have  
11 different histories, different legal battles, different  
12 constituencies, if I remember correctly and, thus, that my  
13 analysis that they constitute state policy was just simple  
14 speculation.

04:58:59

15 Q. Did Dr. Alford identify anything about those topics  
16 that he raised that he believed was wrong or would require  
17 a different configuration of Senate District 10 or explain  
18 it?

04:59:17

19 A. No. Dr. Alford did not provide any evidence as of why  
20 such factors as historical factors, or whatnot,  
21 constituted a different -- a different or explaining why  
22 they are important in considering that.

04:59:41

23 Q. And with respect to the third -- the third analysis,  
24 the core population analysis, did Dr. Alford have  
25 criticisms there?

1 **A.** I believe so, but I was wondering if I could take a  
2 look at that. I don't have it.

3 **Q.** It's actually not -- it's not an exhibit.

4 **A.** Oh, okay.

04:59:51 5 **Q.** So it is not, to my knowledge.

6 **A.** Okay.

7 **Q.** But perhaps I can refresh your recollection. Did he  
8 take issue with the number of districts that were below  
9 50 percent core retention in plaintiffs' Alternative Plan  
10 4 versus Plan S-2168?

05:00:07

11 **A.** Yes.

12 **Q.** And what was his general just sort of point about that  
13 phenomenon?

14 **A.** That according to Dr. Alford, some of these  
15 differences in districts in particular, if I remember  
16 correctly, Table 3, he was highlighting those districts  
17 with a core retention -- with a core population retention  
18 less than 50 percent and seems to suggest that that would  
19 create significant disruption to the constituencies of  
20 such candidates.

05:00:45

21 **Q.** And Dr. Alford -- I'm sorry. Dr. Cortina, I'm going  
22 to have you turn to -- and we'll bring up on the screen --  
23 Plaintiffs' Exhibit Number 101. This is your rebuttal  
24 report, and it might help orient you to the data table.

05:01:36

25 Now, on page -- do you have it there?

1 **A.** Yes.

2 **Q.** Going to Page 2 of your report, first, were there  
3 Senate districts in plaintiffs' Alternative Plan 4 that  
4 had higher core retention than the same district in Plan  
5 2168?

05:01:55

6 **A.** Yes.

7 **Q.** You identify two, two in particular, on Page 2. Which  
8 two districts is that?

9 **A.** So I identify Senate Districts 9 and 22 that have a  
10 higher core retention rate in Plan 21 -- in Plan  
11 Alternative 4 in comparison to Plan 2168.

05:02:08

12 **Q.** What is the magnitude of those differences?

13 **A.** So for Senate District 9 in Alternative Plan 4 is  
14 64.2 percent versus 54.4 [sic] in Plan 2168.

05:02:33

15 **Q.** Just to -- is it 50.4?

16 **A.** 50.4, yes.

17 **Q.** And then for SD-22?

18 **A.** The core retention rate for Senate District 22 in  
19 Alternative Plan 4 is 81.4 versus 59.9 percent in Plan  
20 2168.

05:02:56

21 **Q.** And then for Senate District 10 what is the  
22 difference?

23 **A.** That is a 100 percent core retention rating in  
24 Alternative Plan 4 and 59.7 percent in core retention in  
25 Plan 2168.

1 THE REPORTER: I'm sorry. Could you say the  
2 second number again.

3 THE WITNESS: 59.7 percent.

4 THE REPORTER: Thank you.

05:03:16

5 BY MR. GABER:

6 **Q.** Dr. Cortina, was one of Dr. Alford's criticisms that  
7 Republican incumbents might prefer to have a larger core  
8 retention in their district as it's redrawn?

9 **A.** Yes.

05:03:29

10 **Q.** Now, with respect to the specific districts that he  
11 identified, what is your -- what do you report here as to  
12 what the response is to Senate Districts 12 and 24?

13 **A.** Yes. These are two seats in which the Republican  
14 incumbents are not running.

05:03:47

15 **Q.** Is it the case, then, that the Republican incumbent  
16 wouldn't have, in your view, a concern over the core  
17 retention figure for the district?

18 **A.** By that, the constituency of that incumbent is no  
19 longer his or her consideration.

05:04:05

20 **Q.** And with respect to Senate Districts 5 and 30, what  
21 did you find?

22 **A.** I found that in these particular cases the incumbents  
23 are running unopposed in the primary and general  
24 elections. So they maintain their core constituency.

05:04:29

25 And in Senate 18 the Republican candidate is also

1 running unopposed in the primary election and will face a  
2 challenge in the '22 general election for Democratic  
3 challengers.

05:04:51

4 However, the average margin of victory in Senate  
5 District 18 was 16 percent for 2018 and then 19 percent  
6 for 2020, which seems to suggest that these are very  
7 comfortable margin of victories for the Republican  
8 candidate.

05:05:14

9 **Q.** Now, in the next paragraph you talk about two more  
10 districts. What did you report with respect to SD-14  
11 under plaintiffs' Alternative Plan 4?

05:05:33

12 **A.** Senate District 14 has the lowest core retention rate  
13 of any district in the Alternative Plan 4. As I  
14 understand, this would be an open seat, a new creation  
15 seat; and, therefore, there would be no incumbents whose  
16 interests would be or could be affected by these low core  
17 retention rates.

05:05:55

18 And finally, Senate District 2 has a high core  
19 retention percentage in Alternative Plan 4 versus  
20 Alternative Plan 2168.

21 **Q.** And I just want to clarify that last point. So Senate  
22 District 2 the core retention figure is actually higher --

23 **A.** In Alternative Plan 4.

24 **Q.** -- than it is in Plan S-2168?

05:06:06

25 **A.** That's correct.

1 MR. GABER: I have no further questions at this  
2 time. I pass the witness.

3 JUDGE GUADERRAMA: Yes. Mr. Thompson.

05:06:26

4 MR. GABER: For the Court, I have -- would you  
5 like to wait until we adjourn?

6 JUDGE GUADERRAMA: If you want to just hand them  
7 to my clerk, he will pass them to us.

8 MR. GABER: Dr. Cortina, would you like another  
9 bottle?

05:06:49

10 THE WITNESS: Yes. Thank you.

11 MR. GABER: May I approach the witness, Your  
12 Honor?

13 JUDGE GUADERRAMA: Yes, sir. Thank you.

14 THE WITNESS: Thank you.

05:07:08

15 MR. THOMPSON: May I, Your Honor?

16 JUDGE GUADERRAMA: You may whenever you are  
17 ready.

18 MR. THOMPSON: Will Thompson for the State.

19 **CROSS-EXAMINATION**

05:07:25

20 BY MR. THOMPSON:

21 **Q.** Dr. Cortina, I'm going to walk you through the three  
22 opinions that you have been discussing today, and I'm  
23 happy to put up on the screen or to hand to you your  
24 report whenever you think that's useful. So just let me  
05:07:38 25 know if you don't have it and you need it.

1 On Page 2 of your report, Plaintiffs' Exhibit  
2 Number 45, you have a heading that says "Opinion on  
3 Election Analysis under Plan S-2168 and Plan POWBS-2020."  
4 Do you remember that?

05:08:02

5 **A.** Yes, sir.

6 **Q.** Is Plan POWBS-2020 Alternative Plan 4?

7 **A.** That is correct.

05:08:20

8 **Q.** Now, the election analysis that is referred to in that  
9 opinion, that's an exogenous election analysis, not an  
10 endogenous election analysis, right?

11 **A.** What do you mean by "exogenous" and "endogenous"?

12 **Q.** You are not familiar with those terms?

05:08:31

13 **A.** I am familiar but people have different  
14 interpretations and I want to be able to give you the best  
15 answer that I can.

05:08:47

16 **Q.** My understanding is that an endogenous election  
17 analysis of SD-10 would be relying on underlying electoral  
18 data votes cast in races for the Texas Senate,  
19 specifically SD-10, where an exogenous election analysis  
20 would depend on not SD-10 races like, say, statewide  
21 races.

22 **A.** I totally agree with your definition.

05:09:05

23 **Q.** Okay. So on that definition, is it fair to say that  
24 your analysis is an exogenous analysis, not an endogenous  
25 one?

1 **A.** That is correct.

2 **Q.** Your election analysis analyzes the votes cast in  
3 statewide races within the boundaries of State Senate  
4 districts; is that right?

05:09:15 5 **A.** That's correct.

6 **Q.** It does not consider election results from the State  
7 Senate races *per se*, right?

8 **A.** That is correct.

9 **Q.** You didn't analyze the percentage of the vote the  
05:09:23 10 candidate for the State Senate may get in a particular  
11 district, right?

12 **A.** No, I did not.

13 **Q.** And it might be the case that the percentage of the  
14 vote a statewide Republican candidate receives would be  
05:09:35 15 different than a percentage of the vote a State Senatorial  
16 Republican candidate receives; is that right?

17 **A.** Uh-huh. Correct.

18 **Q.** Now, your report says that you analyzed reconstituted  
19 election results for all 2018 and 2020 statewide races; is  
05:09:51 20 that right?

21 **A.** Yes, sir.

22 **Q.** The 2018 and 2020 statewide election results were the  
23 data provided to you by counsel for the plaintiffs, right?

24 **A.** By the -- yeah. The Texas Legislative Council and the  
05:10:10 25 counsel gave me the PDFs, yes.

1 Q. I just want to make sure the record is clear on this.  
2 So you are saying the underlying data was prepared by TLC,  
3 right?

4 A. The data comes from TLC. That is correct.

05:10:21 5 Q. And then the way the data got from TLC to you was  
6 through the plaintiffs' lawyers, right?

7 A. Yes.

8 Q. And you didn't choose 2018 and 2020, right?

9 A. I chose 2018 and 2020, and that was the data provided.

05:10:35 10 Q. Do you remember giving a deposition in this case?

11 A. Yes.

12 Q. Now, do you remember what answer you gave to the  
13 question --

14 A. That was -- yes.

05:10:42 15 Q. -- why did you choose 2018 and 2020?

16 A. Yes.

17 Q. And what answer was that?

18 A. That was the data that was given, provided.

05:10:56 19 Q. Could we put up Page 52 of Dr. Cortina's declaration  
20 -- I'm sorry -- deposition testimony starting on Line 17  
21 going to 21.

22 So, Dr. Cortina, you can see there that in response to  
23 the question why did you choose 2018 and 2020 you answered  
24 "I did not choose them"; is that correct?

05:11:17 25 A. That is correct.

1 Q. You are not abandoning that testimony today?

2 A. No.

3 MR. THOMPSON: We can take that down, Brian.

4 Thanks.

05:11:26

5 BY MR. THOMPSON:

6 Q. For your election analysis you considered margin of  
7 victory; is that right?

8 A. Yes, sir.

05:11:34

9 Q. You didn't consider anything besides margin of  
10 victory, right?

11 A. No.

12 Q. And in your report "margin of victory" means the  
13 percentage of the vote the winner had minus the percentage  
14 of the vote that the runner-up had, right?

05:11:44

15 A. Correct.

16 Q. You did not analyze how many Republicans would have  
17 won state senatorial elections in 2018 under Alternative  
18 Plan 4, right?

19 A. No.

05:11:58

20 Q. And your analysis does not predict how State Senate  
21 races will perform; is that right?

22 A. No.

23 JUDGE GUADERRAMA: Is that right? He asked "is  
24 that right?"

05:12:12

25 Can you ask it again.

1 MR. THOMPSON: Right.

2 BY MR. THOMPSON:

05:12:21

3 Q. Sorry, Dr. Cortina. That was a poorly phrased  
4 question. I'm going to ask you to clarify what you meant  
5 there.

6 Does your analysis predict how State Senate races will  
7 perform? Yes or no?

8 A. No.

05:12:33

9 Q. And your analysis also doesn't include any prediction  
10 whatsoever; is that correct?

11 A. That is correct.

12 MR. THOMPSON: Brian, can we pull up Plaintiffs'  
13 Exhibit Number 101, which is Dr. Cortina's rebuttal  
14 report.

05:12:50

15 BY MR. THOMPSON:

16 Q. Dr. Cortina, I believe you were just talking about  
17 this. Do you remember that?

18 A. Yes, sir.

05:12:57

19 Q. Now, we have got to get past the two-page declaration  
20 at the beginning to get to the three-page report. So  
21 let's get to Page 2 of the report, which should be Page 4  
22 of the document. And I would like to focus on the first  
23 full paragraph. You are welcome to read the whole thing  
24 to yourself. There is a part starting in the fourth line  
05:13:15 25 that I'm focused on.

1           So if you can follow along with me, that part says,  
2       "SB-2168 and Plan 4 are similar in the sense that both  
3       plans provide 19 districts in which Republicans would be  
4       expected to win with an MOV greater than 10 percent or  
05:13:35 5       with 55 percent or more of the vote."

6           Do you see that?

7       **A.**   Yes, sir.

8       **Q.**   When you say, quote, "Both plans provide 19 districts  
9       in which Republicans would be expected to win with an MOV  
05:13:49 10       greater than 10 percent or with 55 percent or more of the  
11       vote," end quote, you are not talking about the state  
12       senatorial races, right?

13      **A.**   No.

14      **Q.**   So it's right that you are not talking about the state  
05:14:01 15       senatorial races?

16      **A.**   I am not talking about the state senatorial races.

17      **Q.**   You are talking about the statewide races?

18      **A.**   I'm talking about, yes, the statewide races.

19      **Q.**   For these statewide elections that you analyzed in  
05:14:12 20       your report, you decided to use 10 percent as a margin of  
21       competitiveness; is that right?

22      **A.**   That is correct.

23      **Q.**   Were you in the courtroom yesterday?

24      **A.**   No.

05:14:22 25      **Q.**   Did you otherwise read or hear Dr. Barreto's

1 testimony?

2 **A.** No.

3 **Q.** Well, if I tell you that he testified yesterday that a  
4 district favoring the Democratic candidate 57 percent to  
05:14:37 5 43 percent is not solidly Democratic, do you have any  
6 reason to disagree with his testimony?

7 **A.** Yes.

8 **Q.** So you disagree with Dr. Barreto if he, in fact, said  
9 that?

05:14:50 10 **A.** Yes.

11 **Q.** Because in your analysis a 57:43 district would not be  
12 considered competitive; is that right?

13 **A.** Well, I mean, it's -- it's -- thinking hard, it  
14 depends. It depends on the --

05:15:10 15 **Q.** Doctor, I'm sure that in the abstract we could talk a  
16 lot about what "competitive" means. I just mean for the  
17 definition you used in your report, 57:43 is not  
18 competitive, right?

19 **A.** We used different definitions. That is correct.

05:15:24 20 **Q.** Okay. I'm going to transition topics slightly,  
21 Dr. Cortina. We have been talking about your election  
22 analysis. Now I want to ask you about some of the things  
23 you said were not part of the election analysis, just to  
24 get those confirmed on the record.

05:15:37 25 You were not asked to analyze any legislative motive,

1 right?

2 **A.** I was not asked to do so.

3 **Q.** And you are also not offering an opinion on what  
4 alternative to S-2168 the Texas Legislature may have  
05:15:52 5 considered; is that correct?

6 **A.** That is correct.

7 **Q.** You don't know if the Texas Legislature considered  
8 anything like Alternative Plan 4, do you?

9 **A.** No.

05:16:00 10 **Q.** And you don't know if Alternative Plan 4 even existed  
11 at the time the legislature was considering redistricting,  
12 do you?

13 **A.** That is correct. I do not know.

14 **Q.** In fact, we can just pull up Alternative Plan 4.

05:16:15 15 MR. THOMPSON: Brian, would you please bring up  
16 Plaintiffs' Exhibit Number 92.

17 BY MR. THOMPSON:

18 **Q.** Dr. Cortina, can you see that on your screen?

19 **A.** More or less.

05:16:23 20 **Q.** I think we have a paper copy, if you would like it.  
21 It's not particularly important other than, for right now,  
22 can you just recognize this as Alternative Plan 4?

23 Can you see in the top right-hand corner it's from  
24 Texas Plan 4?

05:16:41 25 **A.** Yes. I can read that on the screen.

1 Q. Okay. And then if we zoom in on the bottom right-hand  
2 corner, there is a date. It says 12-21-2021. Do you see  
3 that?

4 A. Yes.

05:16:52

5 Q. Based on your understanding of TLC data, do you  
6 understand that this was created on December 21, 2021?

7 A. Yes.

8 Q. And do you know that that was after the legislature  
9 had finished redistricting?

05:17:05

10 A. Yes.

11 Q. Now, it may be the case that legislators have a  
12 partisan motivation to disfavor or favor particular  
13 colleagues; is that right?

14 A. It may be the case.

05:17:20

15 Q. Although the performance of districts is one partisan  
16 motivation, there are other ones, aren't there?

17 A. I assume so.

18 Q. Do you remember in your deposition saying "yes"  
19 instead of "I assume so"?

05:17:36

20 A. Yes, I mean.

21 Q. Okay. And you weren't asked to consider other  
22 partisan motivations behind S-2168, were you?

23 A. No. I was just asked to -- I did not consider any  
24 partisan motivation. I was just asked to analyze the

05:17:50

25 election results of Plan 2168 versus Plan 4.

1 Q. Sure. So you don't know if Alternative Plan 4 is  
2 consistent with any of the legislature's other partisan  
3 motivations, do you?

4 A. I don't know.

05:18:04 5 Q. You didn't talk with any legislators about Alternative  
6 Plan 4, did you?

7 A. No.

8 Q. I'm going to try just one specific example, and then  
9 we'll move on.

05:18:14 10 A. Yes, sir.

11 Q. Are you aware that former-Senator Pete Flores has  
12 announced his intent to run for the newly configured  
13 SD-24?

14 A. Yes. I read in the news.

05:18:23 15 Q. And you didn't consider whether Alternative Plan 4 is  
16 configured such that SD-24 is favorable to former-Senator  
17 Flores, did you?

18 A. No. I did not. I was not -- that was not part of my  
19 mission.

05:18:35 20 Q. Understood. You also didn't analyze whether  
21 Alternative Plan 4 would comply with the Voting Rights  
22 Act, did you?

23 A. No. I was not asked to do so.

05:18:49 24 Q. And you didn't analyze whether Alternative Plan 4  
25 complies with the one-person, one-vote principle, right?

1 **A.** No. And I wouldn't have taken that. I am not a  
2 lawyer. So I would say --

3 **Q.** I understand. The answer may seem obvious to some of  
4 these questions.

05:18:57 5 **A.** Yes, sir.

6 **Q.** The last one on this topic: You didn't analyze  
7 whether Alternative Plan 4 complies with the 14th  
8 Amendment, right?

9 THE REPORTER: I'm sorry. Say that one more  
05:19:08 10 time, please.

11 MR. THOMPSON: Sorry.

12 BY MR. THOMPSON:

13 **Q.** You didn't analyze whether Alternative Plan 4 complies  
14 with the 14th Amendment, right?

05:19:08 15 **A.** No, sir.

16 **Q.** I'm going to transition topics another time,  
17 Dr. Cortina. Moving away from your first opinion or  
18 moving to your second opinion now, and that opinion was  
19 about the comparison of the different maps. Do you  
05:19:25 20 remember that?

21 **A.** Yes, sir.

22 **Q.** And that -- we can put it up if you need it. I  
23 believe it appears under the bold heading in your report:

24 "Opinion on the comparison between Plan S-2168, Plan  
05:19:42 25 H-2316, Plan C-2193, Plan E-2106 as related to SD-10 in

1 Tarrant County, Texas."

2 Does that sound right to you?

3 **A.** Yes, sir.

4 **Q.** Now, to form that opinion, you compared the maps

05:19:55

5 visually; is that right?

6 **A.** That is correct.

7 **Q.** So your analysis was to look at the maps and determine  
8 if they are different; is that correct?

9 **A.** That is correct.

05:20:03

10 **Q.** After looking at the maps, you assert in your report  
11 that the legislature has a policy of keeping the areas  
12 north and south of Fort Worth whole. Is that what you  
13 asserted?

14 **A.** Yes.

05:20:15

15 **Q.** And you derived that policy by comparing the  
16 Congressional plan and the State Board of Education plan  
17 to the Senate plan; is that right?

18 **A.** That is correct.

19 **Q.** You didn't talk to any legislators about whether they  
20 intended this to be a state policy, right?

05:20:25

21 **A.** No.

22 **Q.** Now, finally, I'm going to transition to your third  
23 opinion, Dr. Cortina. This is the core retention opinion.  
24 Do you remember that?

05:20:36

25 **A.** Yes, sir.

1 Q. On average, S-2168 retains more of the benchmark  
2 population than Alternative Plan 4 does; is that correct?

3 A. Can you refer me to the page, please.

4 Q. The page of your report that has this opinion?

05:21:00

5 A. Yes, sir.

6 Q. Sure. We're talking about Plaintiffs' Exhibit  
7 Number 45, which is your report. It's Page 11 of your  
8 report is where the opinion begins.

9 MR. THOMPSON: Brian, you may have it already.

05:21:07

10 BY MR. THOMPSON:

11 Q. That's Page 21 of 26 in the combined PDF.

12 A. Yes. Perfect.

13 Q. Okay.

14 A. I'm there.

05:21:14

15 Q. So you can see the bold, underlined heading that says  
16 "Core population retention/overlap population between Plan  
17 S-2168, Plan 2100 (benchmark) and Plan POWBS-2020."

18 Do you see that?

19 A. Yes, sir.

05:21:33

20 Q. And again, Plan POWBS-2020 is Alternative Plan 4,  
21 correct?

22 A. Correct.

23 Q. So here is the question that relates to that opinion.

24 On average, S-2168, which is the enacted map for the

05:21:45

25 Senate, retains more of the benchmark population than

1 Alternative Plan 4 does; is that correct?

2 **A.** That is correct.

3 **Q.** Thank you very much, Dr. Cortina. Oh, you know, I  
4 actually do have one more last question based on something  
05:22:00 5 you said in your intro.

6 You mentioned that you are familiar with the origin of  
7 the term "gerrymander"?

8 **A.** Yes.

9 **Q.** It comes from the Founding Father Eldridge Gerry; is  
05:22:10 10 that right?

11 **A.** That's right.

12 **Q.** It's a combination of his name with salamander?

13 **A.** With a salamander. That is correct.

14 **Q.** Because his political opponents thought that a  
05:22:18 15 district he had approved as governor looked sort of like a  
16 salamander and it was designed to help his fellow  
17 partisans; is that correct?

18 **A.** Right. It's a fantastic story of District 8.

19 **Q.** Have I gotten it close enough to accurate?

05:22:32 20 **A.** Yes.

21 **Q.** Okay. So is it fair to say that partisan  
22 gerrymandering is an American tradition? Maybe one you  
23 like; maybe one you don't. Is it an American tradition?

24 **A.** I don't think so. It's an American tradition to  
05:22:46 25 allow, as you said before, one vote, one person and to be

1 able to have the opportunity to exercise our rights in the  
2 ballot box. I think that it's -- it's one of the  
3 traditions that have made this country great in terms of  
4 standing by our democratic values.

05:23:09 5 **Q.** I can understand that you like that tradition. Do you  
6 happen to know what year Gerry's salamander was drawn?

7 **A.** I don't recall exactly.

8 **Q.** Is it fair to say it was in the early 1800s?

9 **A.** I think so, or about that.

05:23:20 10 **Q.** Do you know what year the one-person, one-vote  
11 principle was created?

12 **A.** I don't have that date in my mind.

13 **Q.** Is it fair to say it might have been during the 1960s?

14 **A.** It might be, yes, sir.

05:23:31 15 MR. THOMPSON: No further questions. Thank you.

16 THE WITNESS: Thank you very much.

17 JUDGE GUADERRAMA: Mr. Gaber.

18 **REDIRECT EXAMINATION**

19 BY MR. GABER:

05:23:46 20 **Q.** Dr. Cortina, counsel just asked you about you  
21 represented a comment that Dr. Barreto had made about a,  
22 say, 58 percent district. Do you recall that?

23 **A.** Yes.

24 **Q.** Now, you weren't in the courtroom for that testimony?

05:24:01 25 **A.** I was not.

1 Q. Were you in the courtroom earlier today when Senator  
2 Powell was cross-examined by the State's attorneys?

3 A. I was not.

05:24:12

4 Q. Well, if I represent to you that counsel for the State  
5 characterized a 58 percent victory as a sound victory,  
6 would you agree with that characterization?

7 A. I would.

05:24:26

8 Q. And as between Dr. Barreto and the State's own  
9 lawyers, who would you assume had a better sense of what  
10 the State thought was an electoral victory?

11 MR. THOMPSON: Objection. Calls for speculation  
12 and misstates the roles of lawyers in the Office of the  
13 Attorney General.

05:24:39

14 JUDGE GUADERRAMA: You are asking him if you  
15 think they have a better idea of what a sound victory is  
16 based on what they said? That's what you are asking?

17 MR. GABER: I'll withdraw that question, Your  
18 Honor.

05:24:50

19 JUDGE GUADERRAMA: I'm not sure I understood.  
20 Ask it again.

21 BY MR. GABER:

05:25:10

22 Q. Your task was to compare two plans, one that the State  
23 enacted and one that was an alternative plan that might  
24 show a better performance for Republican candidates if  
25 they were -- if they were truly conducting a partisan

1 gerrymander; is that correct?

2 **A.** That is correct.

3 **Q.** And the question is: If you were looking to a source  
4 for what the State considered to be -- the Republican  
05:25:26 5 Party and the State considered to be or the Republican  
6 legislators and the State considered to be a sound victory  
7 for Republican candidates, would you look to the lawyers  
8 hired by or counsel of the chief map drawer or would you  
9 look to Dr. Barreto's opinion?

05:25:44 10 MR. THOMPSON: Objection. Misstates between the  
11 lawyers --

12 JUDGE GUADERRAMA: Yeah. I'm going to sustain  
13 his objection.

14 BY MR. GABER:

05:25:55 15 **Q.** Now, you were also asked about some of the other  
16 partisan considerations that maybe were considered, and  
17 one example was how the district that former-Senator  
18 Flores was running in. Do you recall that?

19 **A.** Yes.

05:26:09 20 **Q.** Did Dr. Alford in his response report identify any  
21 issue with respect to the district that Senator Flores --  
22 former-Senator Flores would run in?

23 **A.** No. He did not raise any issues.

24 **Q.** Did he raise any examples of these other types of  
05:26:27 25 partisan considerations that he identified as a flaw in

1 your analysis?

2 **A.** No, he did not.

3 MR. GABER: Thank you. I have no further  
4 questions.

05:26:34

5 JUDGE GUADERRAMA: Mr. Thompson?

6 MR. THOMPSON: Nothing further, Your Honor.  
7 Thank you.

8 JUDGE GUADERRAMA: May Dr. Cortina be permanently  
9 excused?

05:26:43

10 MR. THOMPSON: Yes, Your Honor.

11 JUDGE GUADERRAMA: Mr. Gaber?

12 MR. GABER: Yes.

13 JUDGE GUADERRAMA: All right. Doctor, thanks for  
14 coming down. You have a good afternoon.

05:26:50

15 THE WITNESS: Thank you, Your Honor. Thank you  
16 very much.

17 JUDGE GUADERRAMA: All right. You have about  
18 34 minutes left.

05:26:58

19 MR. DUNN: Your Honor, the plaintiffs are  
20 prepared to rest at this time. We do need to raise an  
21 issue that was filed this morning, a motion in limine  
22 regarding Senator Huffman's testimony. We didn't see any  
23 point in lying behind the log on the issue.

05:27:13

24 The Court might be aware of a three-judge court  
25 opinion earlier this week issued in Alabama where the

1 Court concluded that when members of the legislature came  
2 and testified in defense of their plans, that served as a  
3 waiver of legislative privilege.

05:27:28

4 And it's a bit of a catch-22, just to be frank, for  
5 both sides. We took Senator Huffman's deposition last  
6 Friday. I think it's fair to say on all the subjects  
7 specific to the plan and the legislative process, she  
8 either didn't know, didn't recall, or invoked legislative  
9 privilege or at least on the vast majority of subjects.

05:27:43

10 We've provided that testimony to the Court.

11 So we have been given notice that the State intends to  
12 call Senator Huffman tomorrow. It will be our position  
13 that the minute she takes the stand she has waived  
14 legislative privilege.

05:27:56

15 In the alternative, if the Court disagrees with that  
16 stance, then we would suggest that any inquiry of Senator  
17 Huffman has to first be linked to a specific place in the  
18 record where she has made this statement before by page or  
19 line of the transcript or otherwise minutes and seconds to  
20 the video.

05:28:13

21 JUDGE GUADERRAMA: Well, if I were the only judge  
22 up here, I could tell you what my opinion was; but I'm  
23 not. So we need to talk about it and see what that would  
24 be. I come from a long history of criminal defense, and  
25 it suggests some things to me about privilege and taking

05:28:33

1 the stand. I don't know what my colleagues think. I  
2 would need to figure that out.

3 MR. HILTON: Your Honor, may I respond?

4 JUDGE GUADERRAMA: Sure.

05:28:43

5 JUDGE SMITH: Will we be getting a written  
6 response from the State?

05:28:54

7 MR. HILTON: If that would be helpful to Your  
8 Honors, I'm certain we could do that. We didn't see the  
9 motion in limine that was filed this morning until after  
10 we already began.

11 JUDGE SMITH: I understand. We didn't see it  
12 either. That's okay.

05:29:03

13 MR. HILTON: And Mr. Dunn and I conferred  
14 regarding this issue before he filed it. I do understand  
15 we have a disagreement regarding legislative privilege.

16 We can't agree to the motion and the relief that  
17 Mr. Dunn is requesting, and I think he has grossly  
18 mischaracterized that Alabama opinion. But I --

05:29:18

19 JUDGE GUADERRAMA: Come to the mic so we can hear  
20 you better.

21 MR. HILTON: Thank you.

22 JUDGE SMITH: We don't mean to rush you. You  
23 haven't filed anything. So give us your full response  
24 now, if you would, to the extent that you can.

05:29:29

25 MR. HILTON: Thank you, Your Honor. So again,

1 having only just seen the motion this morning, we can't  
2 agree to the relief that he is requesting. We think it's  
3 overbroad. We think it's unduly burdensome and not  
4 helpful to the Court.

05:29:42 5 That said, as I understand Mr. Dunn's complaint, he  
6 doesn't want the State to use privilege as both a sword  
7 and a shield and to selectively invoke it. We have no  
8 plans to use the privilege as both a sword and a shield.

05:29:58 9 Senator Huffman testified in her deposition that she  
10 intends to invoke legislative privilege to the fullest  
11 extent allowed by law. She understands -- she intends to  
12 do so tomorrow on the stand here.

13 She does not intend to waive her privilege. We  
14 strongly disagree with Mr. Dunn that just by testifying  
05:30:12 15 she waives the privilege.

16 In that Alabama case that Mr. Dunn refers to, the  
17 legislators at issue actually intervened into the case,  
18 became parties to the case, asserted factual and legal  
19 defenses and/or actually, in fact, the Court found, using  
05:30:30 20 privilege as a sword and a shield.

21 Senator Huffman is not a party to this case. She is a  
22 third-party fact witness. She has a number of public  
23 statements that we can go through with the Court, and she  
24 can confirm they were her public statements regarding  
05:30:43 25 issues that are relevant to this case. We will go through

1 them on the video, just like we have done today. And she  
2 can also testify to non-privileged matters about the  
3 redistricting process and anything else that would be  
4 relevant to the Court.

05:30:56 5 So, you know, I'm happy to respond to any specific  
6 questions but, you know, I guess the point here is that,  
7 one, I don't think that the problem that Mr. Dunn is  
8 concerned about, using privilege as a sword and a shield,  
9 that's not what we intend to do. And Senator Huffman  
05:31:09 10 doesn't intend to waive her privilege.

11 That said, if the Court is going to entertain the  
12 notion that she will waive her privilege by testifying,  
13 certainly we would not put her on the stand if that's  
14 going to be the case or, at the very least, we would need  
05:31:21 15 to discuss that and Senator Huffman would have to agree to  
16 waive her privilege. But she does not intend to do that.

17 JUDGE GUADERRAMA: All right. So let us -- let  
18 us take a short recess so we can talk amongst ourselves  
19 and reach a consensus, and we'll come back out and let you  
05:31:36 20 know.

21 MR. HILTON: Thank you, Your Honor.

22 THE MARSHAL: All rise.

23 (Recess from 5:31 p.m. to 5:36 p.m.)

24 JUDGE GUADERRAMA: All right. Thank you. You  
05:36:42 25 may be seated. All right.

1           So, Mr. Hilton, we have huddled up and conferred. And  
2           so we've decided that Senator Huffman will be allowed to  
3           testify to everything within the public record; and if she  
4           goes outside the public record, she will waive her  
5           privilege.

05:37:03

6           MR. HILTON: Understood, Your Honor. And I think  
7           that's our intent. I just wanted to be clear. I  
8           anticipate that she will testify as to some non-privileged  
9           matters, facts that don't go to legislative acts, like  
10          mental impressions and communications with other  
11          legislators and communications with staff members.

05:37:19

12          So I understand the Court's direction to me that with  
13          respect to matters that may potentially be privileged,  
14          those need to be contained to only public statements. For  
15          non-privileged matters, I would assume that she can  
16          testify freely as any other fact witness.

05:37:37

17          JUDGE GUADERRAMA: All right. So, Mr. Dunn, he  
18          is saying that she can testify about all the  
19          non-privileged matters. That doesn't -- that doesn't  
20          touch the privilege. But if she talks about things that  
21          are privileged that are not in the public record, then she  
22          does.

05:37:51

23          MR. DUNN: Well, that's going to be the rub, I'm  
24          afraid, exactly where that line is; and I suspect what the  
25          Court will see in the questioning tomorrow is a pushing of

05:38:03

1 that line.

2 So as, you know, a lawyer that's expected to  
3 cross-examine this witness, you know, I'm just looking for  
4 some notice. You know, when I think it's crossing the  
05:38:16 5 line, should I stand up and say that, that I see this as a  
6 waiver? I'm not trying to be disruptive to the  
7 proceedings. I'm also not trying to play gotcha. I just  
8 want to handle it the appropriate way.

9 JUDGE GUADERRAMA: And so let me ask you,  
05:38:29 10 Mr. Hilton. Do you want him to signal to you when he  
11 thinks that -- when she is testifying to things that you  
12 feel are not privileged and, therefore, won't be waiving  
13 her privilege, that he stands up and says, "Well, you  
14 know, I don't agree that they are not privileged. They  
05:38:46 15 are privileged, and she will be waiving her privilege by  
16 testifying to that because it's not in the public record"?

17 MR. HILTON: I think that makes good sense. I  
18 appreciate the offer from Mr. Dunn. I'll also add that  
19 I'll go over all this with the Senator, you know, when she  
05:39:00 20 is on the stand to confirm that she intends to preserve  
21 the privilege and instruct her not to reveal anything that  
22 would be privileged. So we'll make sure to couch it  
23 appropriately as we go throughout.

24 But to the extent Mr. Dunn believes I have made a  
05:39:13 25 mistake in going outside the bounds and he wants to let us

1 know, we would actually appreciate, you know, the  
2 opportunity and I appreciate that.

3 JUDGE GUADERRAMA: Mr. Dunn?

4 MR. DUNN: That sounds like a path forward.

05:39:24

5 Thank you, Your Honor.

6 JUDGE GUADERRAMA: We have an agreement, then.

7 MR. DUNN: So we have nothing further to offer  
8 the Court today. We rest.

05:39:31

9 JUDGE GUADERRAMA: So should we just rest for the  
10 evening and come back tomorrow at 9:00?

11 JUDGE SMITH: Could we --

12 MR. SWEETEN: Your Honors, we are prepared to  
13 start tomorrow morning with the defense's case.

05:39:37

14 JUDGE SMITH: I'm just going to try to get some  
15 kind of a feel from you. We have used two days out of the  
16 week. How are we doing in terms of --

17 MR. SWEETEN: I think we are doing well. I'm  
18 actually surprised we're finished with the plaintiffs'  
19 case already. We have Dr. Alford tomorrow. We have

05:39:51

20 Senator Huffman. We have one witness that we are  
21 considering. We have Keith Ingram. We have two videos  
22 that are about 30 to 40 minutes. That's -- so, you know,  
23 I think we're looking right now -- and, of course, it's  
24 very hard to say to predict what the crosses are, but

05:40:07

25 we're looking at completion maybe early afternoon on

1 Friday, if not sooner.

2 JUDGE SMITH: That would include rebuttal cases  
3 on each side?

05:40:18

4 MR. SWEETEN: I guess we would have to discuss  
5 how extensive those are.

6 MR. DUNN: It's hard to know about rebuttal at  
7 this point, but my expectation would be an hour or two on  
8 our side. And it could be less. It could be zero.

9 JUDGE GUADERRAMA: Could we --

05:40:31

10 MR. SWEETEN: We may be able to accommodate. We  
11 have got a couple of decisions to make on some witnesses.  
12 We have exhibits to talk about with opposing counsel. And  
13 so we're working towards it, but I think at least I can  
14 tell the Court that I think we're going to finish by  
15 Friday afternoon as we had hoped because I know the Court  
16 allocated four days. We may even be able to move it up a  
17 little bit, is my best guess right now.

05:40:44

18 JUDGE SMITH: We've pretty much committed to go  
19 all day Friday, even if we go late. Nobody is trying to  
20 cut out early on Friday, as I'm sure all of you would like  
21 to.

05:41:14

22 MR. SWEETEN: We all would. I would say, Your  
23 Honor, I think that at this point, because we have got two  
24 days to get through -- and I think we'll have a better  
25 idea tomorrow -- probably the best idea is to plan to be

05:41:26

1 finished Friday at 5:00 p.m. But I'm projecting a little  
2 bit earlier, but we'll see.

3 JUDGE GUADERRAMA: So at the end of the day  
4 tomorrow, if we need to, maybe we can start at 8:30 on  
05:41:41 5 Friday?

6 MR. SWEETEN: Yes, Your Honor.

7 JUDGE GUADERRAMA: If we need to go to 6:30 on  
8 Friday and see if we can get your rebuttals in and  
9 completed.

05:41:49 10 MR. DUNN: One question about that, Your Honor,  
11 and then one small issue Mr. Gaber reminded me of. I'll  
12 start with the small issue.

13 The defendants haven't moved in their exhibits yet.  
14 I'm not quarreling about that. But we have referenced a  
05:41:59 15 number of them as part of the plaintiffs' case. So I  
16 would move exhibits of the Defendants' 58 through 69,  
17 which are just the videos and transcripts of the  
18 legislative proceedings.

19 JUDGE GUADERRAMA: He is moving your exhibits  
05:42:13 20 into evidence.

21 MR. SWEETEN: He is moving my exhibits in. We  
22 want to object to those exhibits.

23 (Laughter)

24 MR. SWEETEN: Let me also add that our plan was  
05:42:21 25 to go ahead and move --

1 JUDGE GUADERRAMA: When you open your case. I  
2 get it.

05:42:28

3 MR. SWEETEN: -- at the beginning of the  
4 defendants' case tomorrow morning. We plan to do that  
5 still, if that's all right.

6 JUDGE GUADERRAMA: We'll do that tomorrow  
7 morning, then, at 9:00.

05:42:37

8 JUDGE SMITH: One other thing we can discuss.  
9 Obviously, the Court will decide, once all the evidence  
10 and exhibits are in, whether there is time for or whether  
11 we want any closing statements or whether -- and the  
12 Courts can decide -- we prefer some kind of a summary  
13 brief from both sides or neither. That's just something  
14 that, you know, the two of you can be thinking about in  
15 terms of whether you want to state your preferences.

05:42:55

16 MR. DUNN: That was my next question, Your Honor.  
17 So thank you for that. We will confer and discuss with  
18 counsel. That is all I have.

05:43:10

19 JUDGE GUADERRAMA: Well, see you tomorrow at  
20 9:00.

21 MR. SWEETEN: Have a good evening.

22 JUDGE GUADERRAMA: All right. We are adjourned  
23 for today.

24 THE MARSHAL: All rise.

25 *(Proceedings adjourned at 5:43 p.m. and continued in*

1 Volume 6.)

2 Date: February 7, 2022

3 ***COURT REPORTER'S CERTIFICATE***

4 I, Laura Wells, certify that the foregoing is a  
5 correct transcript from the record of proceedings in the  
6 above-entitled matter.

7           /s/ Laura Wells          

8 Laura Wells, CRR, RMR